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November 6, 2014

Chief Carlos Rojas  
Santa Ana Police Department  
20 Civic Center Plaza  
Santa Ana, CA 92701

Re: Officer-Involved Shooting on January 11, 2013  
Fatal Incident involving Binh Van Nguyen  
District Attorney Investigations Case # S.A. 13-002  
Santa Ana Police Department Case # 13-00971  
Orange County Crime Laboratory Case # 13-40499

Dear Chief Rojas,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion regarding the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Officer Christopher Cecil and SAPD Corporal Oliver Grant. Binh Van Nguyen, 39, died as a result of his injuries. The incident occurred in Santa Ana on Jan. 11, 2013.

## **OVERVIEW**

This letter describes the scope and legal conclusions of the OCDA's investigation of the Jan. 11, 2013, fatal officer-involved shooting of Binh Van Nguyen. This letter provides an overview of the OCDA's investigative methodology and procedures, as well as a description of the relevant evidence examined and witnesses interviewed. This letter includes the OCDA's factual findings and legal principles applied to determine if criminal culpability rests with the SAPD officers involved. OCDA developed the format of this document at the request of many Orange County police agencies, in order to foster greater accountability and transparency in law enforcement.

On Jan. 11, 2013, investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During its investigation, the OCDASAU interviewed three witnesses and contacted 38 more witnesses through supplemental canvass interviews. Additionally, investigators obtained and reviewed the following: SAPD reports, audio and video recordings, dispatch and radio traffic recordings, Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, and officer processing and firearms examination reports, crime scene investigation photographs, medical records and photographs of Nguyen's injuries, Nguyen's criminal history records and related reports, and Officer Cecil's and Corporal Grant's personnel records.

The OCDA conducted a thorough, independent and impartial investigation of the facts and circumstances of this incident. The OCDA expressly limits the scope and findings of this review to whether Officer Cecil or Corporal Grant engaged in criminal conduct. The OCDA does not address issues of policy, training, tactics, or civil liability.

## **INVESTIGATIVE METHODOLOGY**

Among its duties, OCDASAU investigates officer-involved shootings in Orange County where police gunfire injures someone. Six investigators are assigned full-time to OCDASAU. One OCDASAU investigator acts as case agent, supported by other OCDASAU investigators and additional OCDA investigators trained to assist. On average, eight investigators respond to an incident within an hour of being called. These investigators perform a variety of investigative functions, including witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, officer interviews, and hospital investigation as needed. OCDASAU audio records all interviews. The OCCL processes all physical evidence related to the investigation.

When OCDASAU concludes its 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 officer-involved shooting fatalities and custodial death cases to determine if criminal charges are warranted. Deputy district attorneys assigned to the Special Prosecutions Unit review non-fatality officer-involved shootings. Throughout the review process, the assigned prosecutor acts in consultation with a supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memorandum. Often, a case is reviewed by multiple veteran prosecutors, supervisors, the Chief of Staff, and the District Attorney. When appropriate, the reviewing prosecutor directs OCDASAU to conduct further follow up investigation.

One important part of these investigations is to obtain a statement from the officers involved. To that end, Officer Cecil and Corporal Grant each gave separate, voluntary statements to OCDASAU on May 23, 2013.

## **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.

### **Background of the Area**

The Nguyen incident occurred on the 200 block of North Maxine Street in the City of Santa Ana. This area of North Maxine Street is known as a specifically named gang neighborhood that had recently seen an increase in assaults and shootings. Roughly one week prior to the Nguyen incident, undercover Garden Grove Police Department (GGPD) officers were shot at while working surveillance in this same neighborhood. Officer Cecil and Corporal Grant knew these facts prior to the Nguyen incident. As Officer Cecil explained, Maxine Street is a "dangerous" place and, "anytime you go on Max[ine] Street, always make sure you are very careful and just make sure you have another officer with you."

### **Synopsis**

At approximately 6:00 p.m. on Jan, 10, 2013, SAPD Officer Cecil and Corporal Grant began their shifts. They were assigned patrol duties together in the West-End District of Santa Ana. Officer Cecil and Corporal Grant were conducting patrol duties in a black and white marked SAPD vehicle. Corporal Grant was serving as a Field Training Officer (FTO); Officer Cecil was his trainee. Officer Cecil was new to SAPD, but he had more than five years of experience as a police officer with the Montebello Police Department.

At approximately 12:45 a.m. on Jan. 11, 2013, Officer Cecil turned onto North Maxine Street. Per training, he drove at a very slow rate of speed while he and Corporal Grant looked for law violations and suspicious activity. As they entered the 200 block of North Maxine Street, their patrol car approached a white Toyota Camry. The Camry was parked on the side of the street against the curb; its passenger compartment dome lights were illuminated. As their patrol vehicle neared the Camry, Corporal Grant saw a lone individual in the back seat area. Corporal Grant saw the occupant, later identified as Nguyen, crouched in the vehicle "on all fours." Corporal Grant, viewing this activity became suspicious and suspected that a burglary was in progress. Corporal Grant told Officer Cecil of his observations.

Officer Cecil stopped the patrol car in the street, exited and approached the driver's side of the Camry on foot. Concurrently, Corporal Grant briefly stayed in the patrol car to notify police dispatch via the police radio system of their

current location and activity. The immediate scene was unusually well illuminated, as there was a full moon and the Camry was parked almost directly under a street light.

Officer Cecil saw Nguyen, upon noticing police presence, pop-up from the back seat and turn off the Camry's interior lights. Nguyen ducked down and moved both hands towards his waist area. Unable to see Nguyen's hands and having observed Nguyen's actions, Officer Cecil removed his firearm, identified himself as "police," and ordered Nguyen to show his hands "about five times." Nguyen ignored all of Cecil's commands, appeared to be "zoned out," and stared at Officer Cecil with a "thousand mile stare." Officer Cecil, based on his prior training and experience as a narcotics expert, recognized that Nguyen's pupils were extremely dilated. Officer Cecil believed Nguyen "was under the influence of something."

Officer Cecil ordered Nguyen to show his hands. Nguyen, still staring blankly at Officer Cecil, abruptly crawled from the back seat of the Camry over the center console area to the front driver's seat. Once Nguyen reached the driver's seat, Nguyen immediately put his hands under the driver's side door, as if reaching for something out of Officer Cecil's view. Officer Cecil was unable to see Nguyen's hands and feared for his safety because Nguyen continued ignoring verbal commands and Officer Cecil could not see what Nguyen was reaching for behind the driver's side door.

Corporal Grant, still in the patrol vehicle, was preparing to notify dispatch when he heard Officer Cecil yelling verbal commands to Nguyen. Corporal Grant initially thought a foot pursuit was imminent. Accordingly, Corporal Grant exited the patrol car and ran to the Camry to assist Officer Cecil. According to Corporal Grant, he was "deeply concerned and surprised that Nguyen was now seated in the driver's seat." Officer Cecil notified Corporal Grant that Nguyen was non-compliant with all commands, and that he could not see Nguyen's hands. Corporal Grant took a position to the front left of the Camry, near the left front wheel. He drew his service pistol and pointed it at Nguyen. As he did so, Corporal Grant made eye contact with Nguyen. He yelled commands at Nguyen, including "stop ... keep your hands on the wheel ... open the door and come out of the car ...." According to both Corporal Grant and Officer Cecil, Nguyen, at this time, seemed to focus solely on Corporal Grant. According to Officer Cecil, "I've never had someone not listen to me that much."

Officer Cecil and Corporal Grant continued yelling commands at Nguyen to show his hands and exit the Camry. Officer Cecil heard an audible sound of a "click" come from the Camry. He believed this was the Camry's locking mechanism. Officer Cecil saw Nguyen's left hand move to the steering wheel and his right hand move to the Camry's ignition. Officer Cecil and Corporal Grant responded with verbal commands, including "do not start the vehicle ... open the car door ... come out of the car ...." Nguyen ignored these commands and started the vehicle's engine.

Officer Cecil kicked the driver's door when he heard the engine start. Despite this, Nguyen continued to ignore Officer Cecil. Corporal Grant witnessed Officer Cecil unsuccessfully try to open the Camry's locked door.

Officer Cecil and Corporal Grant continued yelling verbal commands at Nguyen to turn off the car and not move the vehicle forward. Nguyen continued staring at Corporal Grant and shook his head left to right indicating "no". Officer Cecil then observed the Camry's brake light become illuminated for the first time. Officer Cecil believed this meant Nguyen's foot was on the brake pedal. Officer Cecil then heard a "loud click as if [Nguyen] was putting the car in gear." Officer Cecil was afraid Corporal Grant would be run over. Officer Cecil warned he was going to shoot Nguyen if he moved the vehicle forward. Corporal Grant responded by telling Officer Cecil not to shoot because he "had a plan" and back-up "was on the way."

Both Officer Cecil and Corporal Grant then heard the vehicle's engine "rev up" right before it moved forward approximately three to five feet in Corporal Grant's direction. Corporal Grant moved back to avoid being struck but that made Corporal Grant further afraid for his and Officer Cecil's safety. Officer Cecil, at this time, was afraid for his own safety, but more concerned for Corporal Grant, who repositioned himself back near the left front wheel of the Camry.

Both Officer Cecil and Corporal Grant continued issuing commands to Nguyen. Nguyen, still looking at Corporal Grant, again shook his head left to right indicating "no." Corporal Grant saw Nguyen's hands on the steering wheel and had the impression Nguyen was trying to turn the vehicle's wheels to the left, toward where Corporal Grant was standing. Both Officer Cecil and Corporal Grant heard the vehicle's engine "revved up" again and saw the Camry lurch forward towards Corporal Grant faster than the time before. Corporal Grant was "frightened to death" and "extremely fearful [Nguyen] was going to run him down." Officer Cecil "thought Corporal Grant was going to be killed." Corporal Grant fired his weapon six times towards Nguyen's head in rapid succession. Officer Cecil fired six times toward Nguyen. Immediately after the shooting, the Camry stopped and Nguyen appeared motionless.

Upon arriving in the area, at approximately 12:46 a.m., SAPD Officer Moreno heard several gun shots north of his location. Upon arriving at the scene, Officer Moreno saw Corporal Grant and Office Cecil standing near the driver's side of the Camry. At approximately 12:47 a.m., SAPD requested that paramedics respond to the location of the shooting.

Corporal Mauricio Estrada arrived on scene and assisted the other SAPD officers with removing Nguyen from the Camry. While doing so, the Camry (engine still running) rolled forward at idle speed, as Nguyen's foot was no longer on the brake pedal. Corporal Estrada noticed the Camry's transmission gear selector was in the "drive" position. Corporal Estrada reached into the Camry and tried to shift the transmission into "park." Corporal Estrada was unsuccessful and the Camry careened into the rear bumper of a vehicle parked several feet in front of the Camry. Once it did so, Corporal Estrada placed the gear selector into the "park" position.

At approximately 12:56 a.m., Orange County Fire Authority (OCFA) personnel arrived on scene. During the physical assessment, OCFA personnel placed Nguyen on a heart monitor, which immediately revealed that he was asystole, or absent heartbeat. Absent the visual and physical signs of life, OCFA paramedics conducted a field determination of death. At approximately 1:05 a.m., it was verified that Nguyen was deceased.

There was no audio or video recording of this incident. Throughout the entire incident, Nguyen did not speak.

#### **Post-Shooting, Voluntary Statement of Officer Cecil**

The majority of Officer Cecil's statement is documented in the above listed factual synopsis. The following paragraphs highlight some of the pertinent factors regarding Officer Cecil's state of mind during the Nguyen incident.

Officer Cecil approached Nguyen while he was in the back of the Camry on all fours. Officer Cecil knew he was in a dangerous neighborhood with a recent increase in gang activity, assaults, and shootings. When Officer Cecil tried to contact Nguyen for suspicious behavior, Nguyen turned off the vehicle's interior light, attempted to hide from view and appeared to reach for something in the Camry hidden from Officer Cecil's view. Officer Cecil also noted Nguyen appeared to be under the influence of some substance, based on Nguyen's "massively dilated pupils," Nguyen's behavior and "thousand mile stare," and Officer Cecil's training and experience as a narcotics expert. Officer Cecil's fear for his safety and Corporal Grant's safety escalated when Nguyen continued ignoring commands, moved from the back seat to the driver's seat, started the ignition, moved the ignition to drive, and lurched several feet forward towards Corporal Grant.

Officer Cecil yelled commands to Nguyen more than a dozen times and even kicked the driver's door in an effort to gain Nguyen's compliance. Nguyen ignored all efforts of Officer Cecil and Corporal Grant to de-escalate the encounter, and in fact repeatedly shook his head "no" to indicate deliberate non-compliance. As Nguyen drove the Camry toward Corporal Grant, Officer Cecil had no doubt Corporal Grant was in imminent danger of being run down.

#### **Post-Shooting, Voluntary Statement of Corporal Grant**

The majority of Corporal Grant's statement is featured in the above factual Synopsis. The following paragraphs highlight some of the pertinent factors regarding Corporal Grant's state of mind during the Nguyen incident.

Corporal Grant exited the police vehicle upon hearing Officer Cecil yelling commands to Nguyen. Corporal Grant was "extremely surprised" and "deeply concerned" when he discovered Nguyen had moved from the back seat into the driver's seat. Corporal Grant repeatedly tried to diffuse the situation and avoid lethal force, even going so far as ordering Officer Cecil, at one point, to "hold off" on shooting Nguyen because backup was responding.

Corporal Grant stated that Nguyen looked at him as though "he did not even exist." As Corporal Grant explained, "what was very disturbing to me was his look." Moreover, Corporal Grant had just dodged the Camry moments earlier when it lurched forward several feet toward him for a second time. He was "extremely fearful" that he was going to get run over. After this, Corporal Grant once again found himself in the Camry's path and Nguyen remained non-compliant. In terms of Nguyen's non-compliance causing the shooting, Corporal Grant explained that "he took away my last choice to handle it the way I wanted to handle it ... he took away every other tactical option I had ..."

When Corporal Grant heard the Camry's engine "revving up pretty high" and saw the vehicle begin to move toward him for a second time, he was "frightened to death ... extremely fearful this guy [was] gonna run [him] down." Corporal Grant summarized his fear in pertinent part: "he's gonna floor it real quick, and I'm history ...."

### **EVIDENCE COLLECTED**

The following items were collected from the scene:

- 6 Winchester .45 cartridge cases
- 6 Winchester .40 cartridge cases
- One broken glass pipe
- One white "BIC" lighter
- A red LG flip style cellular telephone
- Nguyen's clothing consisting of one pair of blue jean pants, a black jacket, a gray T-shirt, white socks, white with black stripe tennis shoes, a black belt and blue under shorts.
- One bullet
- Two bullet jacket fragments
- Three jacketed bullets
- One bullet core
- Nguyen's wallet
- White 2012 Toyota Camry

The following items were collected from Officer Cecil:

- Glock Model 21 pistol, .45 caliber, #HAY926
- One magazine from the pistol containing 7 rounds and 1 round from the chamber
- Two additional magazines from the magazine pouch each containing 13 rounds
- Smith & Wesson, Model, Air weight, .38 caliber revolver, Serial Number: DBA5571 (Photographed only)
- Five Smith & Wesson, .38 caliber cartridges (Photographed only)
- Taser X-26, Serial Number: X00-658002, with two unexpended cartridges (Photographed only)

The following items were collected from Corporal Grant:

- Glock, Model 22, .40 caliber semi-automatic pistol, Serial Number: CWY198US
- One magazine from the pistol containing 9 rounds and 1 round from the chamber of the pistol
- Two additional magazines from the ballistic vest pouch, each containing 15 rounds
- One additional magazine from the holster pouch containing 15 rounds
- Smith & Wesson, Model 36, .38 caliber revolver pistol, Serial Number: J869478 (Photographed only)
- Five .38 caliber cartridges (Photographed only)

- Taser X-26, Serial Number: X00-227536, with two unexpended cartridges (Photographed only)

## **EVIDENCE ANALYSIS**

### **Firearm Examination**

Officer Cecil's Glock Model 21 pistol, .45 caliber, #HAY926

Officer Cecil's Glock pistol was test-fired and operated without malfunction. Six spent cartridges collected from the scene were determined to have been fired from Officer Cecil's pistol.

Corporal Grant's Glock Model 22 pistol, .40 caliber, #CWY198US

Corporal Grant's Glock pistol was test-fired and operated without malfunction. Six spent cartridges collected from the scene were determined to have been fired by Corporal Grant's pistol.

### **Autopsy Findings**

On Jan. 11, 2013, Dr. Yong-Son Kim, a forensic pathologist with the Orange County Coroner's Office, conducted a post-mortem examination of Nguyen. Doctor Kim determined Nguyen suffered two gunshot wounds to the head, one gunshot wound to the lower neck, and one gunshot wound to the right chest. Dr. Kim concluded the cause of death was multiple gunshot wounds to the head.

### **Toxicology Report**

A toxicology exam was conducted on Nguyen's postmortem blood. Cocaine and Benzoylcegonine were detected. The following results were obtained:

| <b>Drug</b>     | <b>Matrix</b>    | <b>Results</b> |
|-----------------|------------------|----------------|
| Cocaine         | Postmortem Blood | .49 mg/L       |
| Benzoylcegonine | Postmortem Blood | 3.8 mg/L       |

### **Broken Glass Pipe Recovered From Toyota Camry Driver's Seat**

OCCL Forensic Scientist Felicia Burke conducted a DNA examination from a swab of the broken glass tube and obtained a mixture of DNA from at least two individuals. Nguyen was not excluded as the major contributor to this DNA mixture. Given that the frequency of choosing an individual, at random, who could be a possible major contributor is more rare than one in a trillion, these results – from a practical standpoint – confirm that Nguyen's DNA was on the pipe. Due to the low level of DNA relating to the minor contributor, such levels were not suitable for database entry or for comparison to reference standards.

### **Controlled Substance Report From Residue Found Inside of Glass Pipe**

A test of the substance that was found inside of the broken glass tube recovered from the Camry had a net weight of 1 milligram and tested positive for cocaine.

### **Nguyen's Prior Criminal History**

The following are Nguyen's relevant California Criminal History Record dating back to 2005. He had been previously arrested for the following charges:

- Under the Influence of a Controlled Substance
- Possession of a Controlled Substance
- Criminal Threats
- Vandalism
- Exhibiting a Deadly Weapon
- Probation Violations

### **Toyota Camry Event Data Recorder (EDR)**

A Bosch Crash Data Retrieval (CDR) System was used to access electronic data stored within the vehicle's airbag control module. This device is commonly referred to as an event data recorder (EDR). The EDR records certain events detected by the vehicle's onboard computer when it senses certain parameters have been met to indicate a crash is likely to occur. The CDR report for the system that was equipped to the Camry indicated that for all recording parameters – including diagnostic data, pre-crash data, system status data – the recording was complete with no detected diagnostic trouble codes. Notably, the imaging of the EDR revealed two stored trigger events saved within the module. One of these events was categorized as a front/rear event. The other event was categorized as a side event. Both events were recorded as non-deployment events, meaning neither resulted in deployment of any supplemental restraint system devices. These two events were the only recorded events in the history of the vehicle's module.

Chronologically, the side event was the oldest, preceding the front/rear event by a time of at least 16.3 seconds. 16.3 seconds is the maximum recordable interval; meaning that the exact time between the events is unknown, other than that it was at least 16.3 seconds.

In general, it can reasonably be determined that, at some point in time, the side event was caused by acceleration felt in the right-side (passenger side) sensor, of sufficient severity to activate the EDR, but of insufficient severity to warrant the deployment of supplemental restraint system devices. At the time of the side event, the driver's seat belt was buckled and the seat belt for the unoccupied right-front passenger was unbuckled. At the time, the Camry's transmission, notably, was shifted into the drive gear. The vehicle detected application of the brake pedal, no recordable velocity, and no detected application of the accelerator pedal.

The fact that the acceleration was detected by the right-side sensor and undetected by other sensors would suggest a focused impact/acceleration to the right side of the Camry, but one that was directed from inside to outside, while being undetected by the Camry's left-side sensors.

At some point at least 16.3 seconds after the side event, a frontal event occurred. In this event, the Camry's Central Airbag Sensor Assembly detected negative acceleration (frontal impact) of sufficient severity to activate the EDR but of insufficient severity to warrant the deployment of supplemental restraint system devices. This was a minor impact resulting in a change of velocity of approximately 1.5 miles per hour. At the time of the frontal impact event, the driver's seat belt was unbuckled as was the seat belt for the unoccupied right-front passenger seat. At the time, the Camry's transmission was shifted into the drive gear. The vehicle had no detected application of the brake pedal, no detected application of the accelerator pedal and was moving at a speed too slow to record a valid reading.

Given the totality of the data recovered related to the frontal impact event, it is reasonable to conclude that even though the vehicle speed readings were not sufficient to register a valid speed reading on the EDR, the Camry, if moving forward, was doing so at a slow velocity unlikely to cause permanent deformation and only capable of generating a nominal change in velocity given the nature of the object it impacted.

Examination of the EDR data is independent evidence that provides valuable insight into the Nguyen incident. Most notably, the EDR provides conclusive evidence the Camry was shifted into the "drive" gear. This effectively corroborates the statements of the involved peace officers that Nguyen shifted the Camry from "park" into "drive" before they shot him.

### **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]. To convict an officer of any of these charges, it must be proven beyond all reasonable doubt there was no legal justification for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) 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, 332-333.)

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 to use reasonable force to effectuate 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 effectuate 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, he must refrain from using force or a weapon to resist.

Similarly, the relevant Criminal Jury Instructions (as written by the Judicial Council of California and set forth in CALCRIM 3470) allow a person being assaulted to defend the attack if he objectively and subjectively believed 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 imminent injury.

The law permits a person to act in self-defense or defense of another when confronted by danger arousing an honest and reasonable fear of bodily injury. This right is the same for real or apparent danger. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.) In the context of a police officer's use of force, the United States Supreme Court provides 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 bodily injury to the officer or others." (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) 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.)

## **LEGAL ANALYSIS**

The legal issue in this incident is whether Officer Cecil and Corporal Grant's conduct was criminally culpable. As stated above, to charge Officer Cecil or Corporal Grant with a criminal violation, the prosecution must prove beyond a reasonable doubt that no legal justification existed for their conduct. In pertinent part, if Officer Cecil or Corporal Grant's actions were justifiable as lawful self-defense or defense of others, then criminal charges are unwarranted.

Penal Code section 197 provides that homicide is justifiable "when resisting any attempt to murder any person, or to commit a felony, or do some great bodily injury upon any person." In *Garner*, the United States Supreme Court held that an officer is entitled to use deadly force when the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily harm to the officer or others.

As the California Court of Appeal recently held, 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, ... [a police officer] 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.) “The question is whether a peace officer’s actions were objectively reasonable based on the facts and circumstances confronting the peace officer ... the test is highly deferential to the police officer’s need to protect himself and others.” (*Id.*) Further, the Court of Appeal held that “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Id.* at 527-528.)

In evaluating Officer Cecil’s and Corporal Grant’s conduct, “we must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day ... what constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Brown, supra*, at 528.) The reality Officer Cecil and Corporal Grant were facing included the need to make a split-second decision when confronted with a non-compliant individual, who repeatedly defied clear reasonable commands, and by all accounts, appeared on the verge of deliberately running over a police officer. Simply put, the law allows police officers to use deadly force in this type of circumstance.

The available evidence in the present case establishes that before Officer Cecil and Corporal Grant discharged their weapons, Nguyen had engaged in several acts of non-compliance. Specifically, the following supports the OCDA’s conclusion that Officer Cecil and Corporal Grant acted reasonably when they shot and killed Nguyen:

- Corporal Grant witnessed Nguyen engage in suspicious activity warranting further investigation, given the location, the time of night, and Nguyen crouching “on all fours” in the back seat of the Camry.
- Corporal Grant and Officer Cecil witnessed facts further supporting the need to investigate criminal activity upon Officer Cecil seeing Nguyen turn off the interior dome light and attempt to hide from police upon realizing their presence.
- Officer Cecil witnessed additional facts warranting further investigation, after seeing Nguyen’s “thousand yard stare” and extremely dilated pupils, both consistent with narcotics use (a fact later corroborated by Nguyen’s post-mortem toxicology and DNA left on a narcotics pipe inside the Camry).
- The particular area where the Nguyen incident occurred was dangerous for police, given that it lies within a specific gang neighborhood with a recent increase in violent crime, and, merely a week prior, a neighborhood where undercover GGD officers on surveillance were shot at; all of these facts were known to both Officer Cecil and Corporal Grant in advance of the Nguyen incident.
- Nguyen repeatedly ignored all commands, and at multiple times, moved his hands out of view, further supporting the need for Officer Cecil and Corporal Grant to hold Nguyen at gunpoint.
- Nguyen deliberately ignored dozens of clear, audible commands given by the officers to de-escalate the situation, including but not limited to, commands to step out of the vehicle, not start the engine, turn the vehicle off, and not put the vehicle in drive.
- Nguyen shook his head left to right indicating “no,” demonstrating that his non-compliance was willful and deliberate.
- Officer Cecil engaged in on-going verbal action to secure Nguyen’s compliance, as well as non-verbal non-lethal action to do the same (including his decision to kick the door in an effort to gain Nguyen’s attention).
- Corporal Grant engaged in non-verbal action to avoid the use of lethal force (dodged the Camry the first time it lurched forward, rather than shoot), he engaged in verbal action to avoid using lethal force directed both at Nguyen and Officer Cecil including advising Officer Cecil that he “had a plan” and to “hold off” on shooting as back-up responded. This fact clearly indicates that both peace officers were doing their utmost best to control the situation and do their job without having to shoot Nguyen.
- When Corporal Grant repositioned himself again near the vehicle’s front left tire, Nguyen turned the wheel toward Corporal Grant.

- Both officers heard the Camry's engine begin to "rev up" again for a second time and begin to accelerate toward Corporal Grant, this time more quickly than before.
- Nguyen said nothing during the encounter; all of his actions were consistent with continued non-compliance.

The courts recognize that police officers making these on-the-spot choices are in dangerous situations deserving of a fairly wide zone of protection. (*Brown, supra*, at 528.) Their use of deadly force is reasonable if the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others. (*Id.*) An officer may reasonably use deadly force when he confronts an armed suspect, or one reasonably believed to be armed, in close proximity whose actions indicate an intent to attack. (*Id.*) In this case, Nguyen used the Camry as a weapon and he directed it squarely at Corporal Grant. Nguyen's actions justified the conduct of Officer Cecil and Corporal Grant in shooting him.

Based on the evidence gathered, the OCDA concludes that Nguyen's actions provided Officer Cecil and Corporal Grant with probable cause to believe that Nguyen posed a significant threat of death or serious physical injury. Both peace officers therefore acted reasonably and justifiably under the circumstances when they shot and killed Nguyen. Any reasonable jury reviewing these facts would reach the same conclusion, and a contrary conclusion would not be reasonable based on the law and all the available evidence.

### **CONCLUSION**

Based upon a review of all evidence obtained by OCDASAU and pursuant to the applicable legal principles, it is our legal opinion that criminal culpability on the part of Officer Cecil or Corporal Grant does not exist. All the available evidence points to the conclusion that both Officer Cecil and Corporal Grant acted reasonably under the circumstances and were justified in shooting Nguyen in lawful self-defense/defense of another on Jan.11, 2013.

Accordingly, the OCDA hereby closes its inquiry into this incident.

Respectfully submitted,



**Chris Alex**  
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Gang Unit



Read and Approved by **Ebrahim Baytieh**  
Acting Assistant District Attorney  
Head of Court – Special Prosecutions Unit