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November 20, 2013

Chief Robert H. Gustafson
Orange Police Department
1107 N. Batavia St.
Orange, CA 92867

Re: Officer-Involved Shooting on June 12, 2013
Fatal Incident involving Joseph Thomas Brewer, Jr.
District Attorney Case # S.A. 13-013
Orange Police Department Case # 13-06-0450
Orange County Crime Laboratory Case # 13-48179

Dear Chief Gustafson,

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 Orange Police Department (OPD) Officer Brian Chambers. Joseph Thomas Brewer Jr., died at the age of 54 as a result of an officer-involved shooting incident. The incident occurred in the City of Orange on June 12, 2013, at approximately 2:20 a.m.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the June 12, 2013, fatal, officer-involved shooting of Brewer. 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 OPD 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 June 12, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators conducted eight interviews and obtained and reviewed the following: OPD reports, audio recordings, and dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Brewer; criminal history records related to Brewer including prior criminal history records and prior incident reports; the personnel records of Officer Chambers; 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 impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OPD officers or personnel, specifically Officer Chambers. The OCDA will not be addressing issues of policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. 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 or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors 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 Chambers provided a voluntary statement to the OCDA on June 12, 2013.

FACTS

Introduction

The following synopsis of the incident is based upon our analysis of the evidence, the primary sources of which are:

- the statement of the sole witness to the incident, Officer Chambers;
- statements from civilians in the surrounding area;
- statements from medical personnel who attended to Brewer's injuries;
- the forensic crime scene evidence; and
- the medical evidence concerning Brewer's injuries.

The primary witness to the incident was Officer Chambers. One civilian was on the scene, but she did not witness the shooting. Both the civilian and Officer Chambers gave voluntary statements to the OCDA, and after reviewing their statements and considering the other evidence, we believe that the facts set forth in this synopsis are reliable and well established.

Synopsis

Approximately one year ago, Brewer moved from Louisiana to California. He lived in a garage on North Shaffer Street, Orange, part of a house owned by a woman Brewer had met while she was traveling in Louisiana. The house consists of two separate buildings, the main residence and the garage, with an outdoor walkway leading between the two buildings. A latched gate separates this walkway from the front of the house.

On June 11, 2013, sometime before 9:00 p.m., Brewer entered the backyard of his residence on Shaffer Street with another resident, acting loud and belligerent. Brewer's landlady came outside and told Brewer to return to his room in the garage. Brewer did not go back to his room and the landlady continued to notice that Brewer was acting intoxicated. At about 12:50 a.m. on June 12, 2013, Brewer's landlady called the police. At 12:52 a.m., Officers Chambers and Rene Guerrero of OPD were dispatched to the home on Shaffer Street.

While waiting for the police, Brewer's landlady and another resident escorted Brewer south on Shaffer Street in an effort to prevent him from disturbing the neighbors. When Officers Chambers and Guerrero arrived, they found all three persons on the northwest corner of the intersection of Shaffer Street and Meats Avenue, approximately five houses south of Brewer's residence. Brewer immediately began heading east down Meats Avenue, away from the police. Brewer was wearing a black cowboy hat, leather jacket, and jeans.

The officers discussed the situation with Brewer's landlady and recommended that she place Brewer's belongings outside with a note indicating that he was no longer welcome in her home. The officers then left the scene. The landlady and the other resident proceeded to pack Brewer's belongings into two suitcases and a duffle bag and place them outside with a note stating, "J.T. You're no longer welcome in this home. Here are your belongings." The landlady then locked the garage door.

Soon thereafter, Brewer reappeared in the backyard holding a paper cup and a wine bottle that was approximately one-quarter full. He wanted to get into the garage to get his wallet, but his landlady told him that she had put all of his belongings outside. Brewer then crawled through a "doggie-door" attached to the garage. His landlady unlocked the garage and found Brewer inside with a different drinking cup containing white pills. Brewer told her; "That's poison. I'm going to kill myself tonight, and tomorrow you're gonna see my dead body in front of your house." Brewer then left the garage and headed toward Shaffer Street, and his landlady and the other resident went back into the main residence.

A short time later, Brewer's landlady exited the residence through a side door leading to the walkway between the main house and the garage. She exited the walkway gate and walked toward Shaffer Street. Brewer was standing on the sidewalk in front of the house. When he saw his landlady, he began to run toward her. She retreated back through the gate, and Brewer followed her. Brewer then pulled out a boxcutter knife and began waving it at his landlady, stating "I'm gonna kill your boyfriend and your kids, one by one."

At 2:08 a.m., the landlady called OPD from her walkway. She told the police that Brewer had returned with a knife and told her that he was going to kill himself. Officers Chambers and Guerrero were dispatched to the scene at 2:14 a.m. They were directed to respond "Code 3" with lights and sirens in order to expedite a response. Officer Chambers was near the scene and decided not to turn on his lights and sirens.

Officer Chambers arrived first at the residence. He heard the voice of the woman whom he had spoken with earlier speaking loudly from the walkway of the house. Officer Chambers approached the walkway and observed Brewer standing behind the walkway gate arguing with his landlady. Officer Chambers recognized Brewer as the man who had earlier run down Meats Avenue. Officer Chambers briefly concealed himself behind a vehicle parked in the driveway in an attempt to hear what the argument was about. Officer Chambers could not hear the conversation, but he could see Brewer clearly and did not notice any weapons.

Officer Chambers then observed Brewer move his right hand toward his pocket area. Based on the information he received from dispatch, this led Officer Chambers to believe that Brewer may be concealing or retrieving a knife. Officer Chambers removed his duty gun from his holster and began to move toward the walkway. Officer Chambers activated his gun flashlight, pointed the gun at Brewer, and shouted, "Put your hand up right now mother f****, get down on your knees!" Brewer did not obey the order. Instead, he unlatched the walkway gate and approached Officer Chambers, asking "What are you going to do if I don't?" Brewer's landlady stated that she shouted to Officer Chambers to warn him that Brewer had a knife, and Officer Chambers saw a knife in Brewer's right hand, its blade pointed up.

As Brewer approached Officer Chambers, Officer Chambers backed up and attempted to maintain a five to six foot distance between himself and Brewer. Officer Chambers ordered Brewer to "Get down" three separate times, but Brewer did not comply. Officer Chambers stated that he feared Brewer would be able to stab him at such a short distance. When he could not safely retreat further without entering the street, he fired three shots. Brewer immediately fell onto his back, and the knife fell out of his hand.

At 2:20 a.m. Officer Chambers notified dispatch over his handheld radio that an officer-involved shooting had occurred. Officer Guerrero and OPD Sergeant Robert Thorsen arrived on the scene immediately. Officer Guerrero handcuffed Brewer and used his left hand to apply pressure to the three apparent bullet wounds on Brewer's chest. Officer Guerrero performed Cardiopulmonary resuscitation (CPR) chest compressions on Brewer. He noticed a strong smell of alcohol emanating from Brewer, and he rolled Brewer onto his side as Brewer began to vomit.

Orange Fire Department personnel arrived on the scene at approximately 2:25 a.m. Using a heart monitor, paramedics determined that Brewer had a moderate heart rhythm with a palpable pulse. They placed him on a gurney and began transporting him to Western Medical Center-Santa Ana (WMCSA). During transport, Brewer went into full cardiac arrest. CPR was performed. Brewer arrived at WMCSA at approximately 2:53 a.m., where he was immediately intubated. At approximately 3:02 a.m. Brewer was treated by the on duty-trauma surgeon. Life-saving efforts were administered, including CPR, epinephrine, and numerous blood transfusions. Brewer was taken to the operating room but medical personnel were unable to control his blood loss. Brewer was pronounced dead at 5:15 a.m.

Background of the Area

The incident occurred on Shaffer Street, a two-lane north/south street approximately five houses north of the intersection with Meats Avenue. Shaffer Street has one northbound and one southbound lane separated by a broken yellow line. Single family residences are on both sides of the street. The residence where the incident occurred on Shaffer Street is on the west side of the street. The shooting occurred during hours of darkness, though the area was illuminated by street lamps and motion-activated lamps attached to the garage of the home. The investigation occurred during early morning daylight hours.

Voluntary, Consensual Statement of Officer Chambers

Officer Chambers gave a voluntary, consensual statement to the OCDA on June 12, 2013, the morning of the incident. His interview lasted approximately 71 minutes. At the time of the incident, Officer Chambers had been a police officer with the City of Orange for 10 years. He had previously worked as a police officer for the Los Angeles County Sheriff's Department for one year and two months. The incident occurred during his regular work hours. Officer Chambers was wearing a long-sleeve uniform with sleeve patches, a badge, and a gun belt containing three magazines. He was equipped with two flashlights, a radio, two handcuffs, pepper spray, a digital recorder, a handgun, and a revolver. He carried the handgun in his holster and the revolver in his front left pocket. Extra rounds for the revolver were held in his right front pocket. Officer Chambers was driving alone in his patrol car the night of the incident.

Officer Chambers described receiving a radio call around 1:00 a.m. or 1:30 a.m. on June 12, 2013, concerning a landlord-tenant dispute in which the female caller wanted a male out of her residence on Shaffer Street. Chambers was the back-up officer on the call to Officer Guerrero. Officers Chambers and Guerrero arrived simultaneously to see two males and one female standing at the northwest corner of Shaffer Street and Meats Avenue. Upon the officers' arrival, one of the males, Brewer, began to run east down Meats Avenue. The female told the officers that she had called the police because Brewer, a transient man she had met in Louisiana and taken in, had threatened to kill her on various occasions if she dated other men. She also told the officers that Brewer had murdered a woman in Louisiana and had been drinking that night. She had a thick accent, and Officer Chambers was unsure whether she was describing a landlord-tenant dispute or an actual criminal threat.

The second male at the scene identified himself as a roommate and corroborated the landlady's statement that Brewer had threatened to kill her. Officer Guerrero advised the landlady to place Brewer's belongings outside for Brewer and to call the police should further problems arise. Officer Chambers believes he was on the scene for 15 to 20 minutes.

According to Officer Chambers, approximately 15 to 20 minutes after he left Shaffer Street, the police again received a call stating that Brewer had returned to Shaffer Street, had a knife in his possession, and was threatening to kill himself on the front porch. Officer Chambers was directed to respond "Code 3" with his lights and sirens on, but he stated that he decided to approach the scene without lights and sirens so that Brewer would not run away from the scene. When Officer Chambers arrived at the home on Shaffer Street, he heard Brewer arguing with the same female he had met earlier on a

walkway behind a closed gate. Officer Chambers approached the patio but did not enter the gate. Officer Chambers stated that he heard the female say Brewer had a knife, which he then heard Brewer deny. He then saw Brewer move his hand toward his pocket, which Officer Chambers says caused him to believe that Brewer was concealing a knife. Officer Chambers then drew his gun and activated its flashlight. He approached the gate and yelled to Brewer, "Mother f****, get on your knees." According to Office Chambers, Brewer responded, "What are you gonna do if I don't?"

Officer Chambers then saw Brewer unlatch the gate and saw Brewer approach him. Officer Chambers believes he told Brewer to stop and get down several additional times. Officer Chambers backed up as Brewer continued to approach him with what Officer Chambers described as an intense stare. Brewer then reached into his right front pocket and pulled out a box-cutter knife. He continued to approach Officer Chambers holding the knife blade up while saying nothing. Officer Chambers backpedaled and believes he maintained a five to six foot distance between himself and Brewer. Officer Chambers stated that he believed Brewer was going to charge him, stab him, or turn around and attack the female who was still standing behind the gate. He also stated that he had learned in training that a subject armed with a knife can cover an average of 21 feet before an officer has time to react, and his fewer-than-21-feet proximity to Brewer made him fear that Brewer would be able to stab him.

Officer Chambers stated that when Brewer came within four to five feet in front of him, Chambers fired his handgun three times. Brewer fell to the ground. Officer Chambers believes this second incident, from the time he arrived at Shaffer Street to the time he fired his handgun, lasted one to two minutes. After the shooting occurred, additional officers arrived on the scene and attempted CPR on Brewer. Officer Chambers stated that he moved across the street from the area of the shooting.

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood **Statement of Jane Doe**

Jane Doe is the owner of the residence on Shaffer Street and Brewer's landlady. She provided the OCDA with the following description of the incident on the morning of June 12, 2013.

Jane Doe stated that she met Brewer in Louisiana approximately two years ago. She took him in when he came to visit California and she let him stay in the spare room in her garage. On the evening of June 11, 2013, around 9:00 p.m., she heard Brewer yelling outside with another resident. When she came outside to investigate, she noticed that Brewer was intoxicated. He refused to listen to her requests to go inside. After a few hours of Brewer continuing to be disruptive, Jane Doe then called the police. When the police arrived at Shaffer Street, Brewer walked away from them. The police advised Jane Doe to put Brewer's belongings outside. She promptly did so and locked the garage.

Once the police left, Brewer came back to Jane Doe's home and jumped the brick wall behind her house. Brewer was holding a wine bottle that was one-quarter full and drinking from a cup. He went through the "doggie-door" in Jane Doe's garage in an attempt to get his wallet from inside. Jane Doe unlocked the garage door and found Brewer inside with a plastic cup full of white pills. Brewer told Jane Doe that he was going to kill himself that evening so that his dead body would be on her porch in the morning. Brewer then began to walk away from the house.

Jane Doe began to walk from her garage to her house and saw Brewer standing under a tree on the front sidewalk. Brewer immediately began running toward Jane Doe. Jane Doe opened the gate leading to her patio, and Brewer followed her through the gate as Jane Doe struggled to close it. Brewer then pulled out what Jane Doe described as a red drywall knife and stated, "I'm gonna kill your boyfriend and your kids, one by one." Jane Doe then called the police again and stated that Brewer had returned and was armed with a knife. Jane Doe had a small, fresh cut on her right hand that she stated was inflicted by Brewer's knife, but Jane Doe could not recollect when during the evening she received the cut.

A short time later, she heard a police officer instruct Brewer to come outside. Jane Doe stated that she told the officer, "He has a knife, be careful." As Brewer exited the gate, she heard the officer tell Brewer to drop his weapon two to three times. She believed there to be approximately eight feet between Brewer and Officer Chambers when she turned to enter her home. She heard two gunshots and turned to see Brewer on the ground. Jane Doe did not witness the shots being fired.

Neighborhood Canvass Interviews

There were no percipient witnesses to the officer-involved shooting besides Officer Chambers. Investigators conducted canvass interviews during the early morning hours of June 12, 2013. Several additional residents of the home on Shaffer Street were interviewed. A few residents heard Brewer outside of the residence being loud between the hours of 10:00 p.m. and 12:00 a.m. One resident reported hearing someone screaming between 1:30 a.m. and 2:00 a.m. Some residents, as well as the surrounding neighbors, reported having gone to sleep before the shooting and having being awakened by the sound of gunshots and sirens. Others stated that they had slept through the entire incident and were unaware anything had happened.

EVIDENCE COLLECTED AT THE SCENE

A forensic scientist employed by the OCCL collected the following evidence at the scene:

- three Winchester brand .40 caliber Smith and Wesson cartridge cases
- one black and orange folding box cutter
- one black cowboy hat
- one black leather jacket
- one brown wallet with chain and keys
- dentures
- one black police rescue bag with a note written on blue paper

EVIDENCE ANALYSIS

Findings at Autopsy

On June 13, 2013, at 9:18 a.m., an autopsy was conducted by Dr. Yong-Son Kim, a forensic pathologist for the Orange County Sheriff-Coroner. Dr. Kim located three bullets in Brewer's body. The first and second bullets were removed from just beneath the skin of Brewer's lower left back. The third bullet was removed from Brewer's lower spine. The gunshot entry wounds in the front area of Brewer's body were not visible at the time of the autopsy due to vertical and horizontal incisions made by the medical personnel who were trying to save Brewer's life. Dr. Kim found no evidence that the shots were fired on contact or in close range.

Dr. Kim determined Brewer's cause of death to be multiple gunshot wounds to the abdomen.

Firearms Examination

A forensic scientist employed by the Orange County Sheriff's Department examined the SIG Sauer Model P226 Elite gun used by Officer Chambers in this incident. The gun was test fired and operated without malfunction in both single and double actions.

Cartridge Case Examination

The three Winchester brand, .40 Caliber Smith and Wesson cartridge cases from the scene were determined to have been fired from Officer Chambers' SIG Sauer gun.

Projectile Examination

The projectiles from the autopsy consisted of three bullets and four small lead fragments. The three bullets were determined to have been fired from Officer Chambers' SIG Sauer gun.

BREWER'S PRIOR CRIMINAL HISTORY

Brewer's California and Louisiana criminal record, including felony manslaughter, was reviewed and considered.

GENERAL LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officer involved in the shooting include murder (PC 187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict any officer of any of these

charges, it would be necessary to prove beyond a reasonable doubt that there were no legal justifications for the officer's actions. (*People v. Banks* (1977) 67 Cal.App.3d 379, 383-84.) Several legal justifications may apply; they are provided by Penal Code sections 196, 197, and 835a.

California Penal Code section 196 states 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. (*People v. Kilvington* (1894) 104 Cal. 86, 89.) The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.)

California Penal Code section 197 provides that 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 make 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." As with Penal Code section 196, section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.) The *Kortum* court 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 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 mind, as a reasonable person, an honest fear and conviction that he 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 U.S. 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.) The U.S. 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 bodily injury to the officer or others." (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) This limitation was, however, subsequently clarified by the United States Supreme Court. The Supreme Court stated that any determination about the reasonableness of force used by an officer "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." (*Graham v. Connor* (1989) 490 U.S. 386, 397.) Thus, "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.* 396.)

As the California Court of Appeal held in a recent case:

“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 effect 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 defendant 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.... The test is highly deferential to the police officer's need to protect himself and others. . . . The question is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required.... 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 v. Ransweiler* (2009) 171 Cal.App.4th 516, 527-528.)

LEGAL ANALYSIS

In order for Officer Chambers to be justly and lawfully charged and convicted of a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that Officer Chambers did not act in reasonable and justifiable self-defense or defense of others when he shot at Brewer.

As applicable to the facts in this case, the justification of self-defense has several legal elements:

1. Officer Chambers actually believed himself or somebody else to be in imminent danger of being killed or severely injured by Brewer;
2. Officer Chambers reasonably believed that the immediate use of force was necessary to defend himself or somebody else against Brewer; and
3. Officer Chambers used no more force than was reasonably necessary to defend against the danger posed by Brewer.

1) Actual Belief in Necessity of Self-Defense or Defense of Other

The question here concerns Officer Chambers' state of mind – did he actually believe that Brewer posed a danger to himself? Certainly, Officer Chambers claimed to have so believed: in his statement to investigators the morning of the shooting, Officer Chambers said that he shot Brewer because he saw that Brewer was pointing a knife at him and believed that Brewer was about to stab either himself or the landlady in the walkway. Of course, a person's statement about their own actions could be the product of self-serving motives. Therefore, it is important to consider other sources of evidence to see whether they are consistent with the claims of Officer Chambers. Here, Jane Doe's statement corroborates Officer Chambers' claim of self-defense. She told dispatch when she called the police the second time that Brewer had returned to her home with a knife. She yelled out to Officer Chambers to be careful because Brewer had a knife. She also estimated that there were approximately eight feet between Brewer and Chambers at one point, corroborating Officer Chambers' statement that he feared being less than the recommended 21 feet away from a subject armed with a knife. Jane Doe stated that she heard Officer Chambers tell Brewer to drop his weapon two to three times but Brewer did not back down.

2) Reasonableness of Belief that Brewer Posed Imminent Danger

The second requirement for establishing the justification of self-defense is proof that Officer Chambers' belief that Brewer posed an imminent danger was reasonable under the circumstances. The following evidence supports the reasonableness of Officer Chambers' belief:

- Dispatch had told Officer Chambers that Brewer was armed with a knife;
- When Officer Chambers responded to the first 911 call, Brewer's landlady told him that Brewer had murdered a woman in Louisiana;
- When Officer Chambers told Brewer to drop his weapon, Brewer disobeyed his command several times. He continued to approach Officer Chambers with the knife pointed blade up until Officer Chambers was cornered on the edge of the street within feet of Brewer and his knife; and
- Brewer's landlady continued to stand in the walkway, in potential range of Brewer's knife, and her hand was cut by Brewer before the shooting occurred.

3) Reasonable Force

The third element required to establish the justification of self-defense is that the force used is no greater than necessary to deal with the apparent danger. Here, the danger reasonably apparent to Officer Chambers was that Brewer was holding a knife with the blade pointed at him and was continuously moving toward him. Under these circumstances, it was not unreasonable or disproportional for Officer Chambers to respond with deadly force. Officer Chambers had learned the 21 foot rule in training, and knew that if he had attempted to access a different weapon, Brewer could easily have closed the gap between them and stabbed Officer Chambers. Officer Chambers was faced with an apparent deadly threat, and he responded with proportional force. As the Court of Appeal held: "The test is highly deferential to the police officer's need to protect himself and others. . . In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

As should be apparent from the above-described legal analysis and legal conclusions, the prosecution would be unable to prove beyond a reasonable doubt that Officer Chambers acted unlawfully. It is clear that Officer Chambers was legally justified in using the level of force that he used. A jury analyzing these facts would justly conclude that the prosecution fails to prove beyond a reasonable doubt that Officer Chambers used unreasonable force under the circumstances.

CONCLUSION

Therefore, based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Officer Chambers, and that there is significant evidence that the officer's actions when he shot Brewer on June 12, 2013, were reasonable and justified under the circumstances.

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

Respectfully submitted,



Ebrahim Baytieh

Senior Deputy District Attorney

Assistant Head of Court - Homicide Unit



Read and Approved by Dan Wagner

Assistant District Attorney

Head of Homicide Unit