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October 11, 2013

Police Chief Kevin Raney
Garden Grove Police Department
11301 Acacia Parkway
Garden Grove, CA 92840

Re: Officer-Involved Shooting Incident on December 1, 2012
Fatal Shooting of Matthew Scott Lane
District Attorney Investigations Case # SA 12-030
Garden Grove Police Department Case # 12-016680
Orange County Crime Lab Case # FR 12-57833
Orange County Sheriff- Coroner Case # 12-04665-MM

Dear Chief Raney:

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 Garden Grove Police Department (GGPD) Officer Gary Coulter, in which Matthew Scott Lane, a 35-year-old with no known permanent address, died as a result of his injuries. The incident occurred in the City of Seal Beach on Dec. 1, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Dec. 1, 2012, fatal officer-involved shooting of Lane. 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 GGPD officer involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Dec. 1, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to the shooting scene located at a Chevron gas station at 2950 Westminster Avenue in Seal Beach. During the course of this investigation, OCDA Investigators conducted 10 interviews, and an additional 15 witnesses were contacted during supplemental canvass interviews. Additionally, Investigators obtained and reviewed the following: GGPD reports; audio recordings, and dispatch and radio traffic recordings; other agency incident reports; Orange County Sheriff Crime Lab (OCCL) reports including autopsy and toxicology; crime scene investigation photographs; and other relevant reports and materials.

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 GGPD personnel, specifically Officer Coulter, as it relates to the death of Lane. The OCDA will not be addressing policy, training, tactics, or civil liability issues.

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 aspect of investigating these types of cases is attempting to interview the officer involved in the shooting. Officer Coulter provided a voluntary statement to OCDA Investigators on Dec. 11, 2012.

FACTUAL SUMMARY

On Oct. 11, 2012, the Orange County Superior Court issued a domestic violence restraining order, ordering Lane to stay at least 100 yards away from his estranged wife and the couple's two children.

On Nov. 29, 2012, at approximately 7:00 p.m., Lane violated the restraining order when he made contact with the couple's children, who were accompanied by their mother (Lane's estranged wife) in the parking lot of a restaurant on Valley View Street in Garden Grove. Lane told his estranged wife that he was staying at a motel in Cypress. Lane was seen leaving the area driving a new model, white Lexus IS 250.

On Dec. 1, 2012, at approximately 12:01 p.m., Lane entered the residence of his estranged wife and children and hid in a bedroom closet. The children witnessed Lane exit their mother's closet, remove \$15 cash and a Bank of America debit card from her purse, and flee the residence.

GGPD Officer Timothy Kovacs responded and documented the reported residential burglary. Officer Kovacs then responded to the Cypress motel where Lane had told his estranged wife he was staying. Officer Kovacs located a white, newer model Lexus IS 250 in the parking lot. He ran the vehicle identification number through the California Law Enforcement Telecommunications System (CLETS) and was advised there was no record of the vehicle on file. Officer Kovacs contacted the front desk of the hotel in an attempt to locate Lane, but there was no record of Lane being a registered guest of the motel or a link to the Lexus, and Officer Kovacs left the hotel without being able to locate Lane.

At approximately 4:28 p.m. on Dec. 1, 2012, Lane drove past the residence of his estranged wife, in violation of the restraining order on file.

At approximately 4:29 p.m., GGPD officers were dispatched to Lane's estranged wife's residence, in reference to the violation of the restraining order. While en route to the location, Officer Kovacs observed Lane travelling northbound on Valley View Street at Chapman Avenue, driving the white Lexus IS 250. Lane turned east into a business complex and exited the complex, driving northbound in the southbound lanes of Valley View Street. Kovacs broadcasted over Orange County Communications emergency red channel and attempted to follow Lane to initiate a car stop, but Officer Kovacs lost sight of Lane's vehicle.

At approximately 4:41 p.m., Seal Beach Police Department (SBPD) Officer David Sansenbach heard the red channel emergency broadcast advising that GGPD had lost a suspect in the area of Valley View Street and Lampson Avenue in the city of Garden Grove. The suspect was identified as Matthew Lane, a parolee at large wanted for violation of a restraining order who was possibly in possession of a stolen, white Lexus IS 250 with paper license plates.

Officer Sansenbach drove south on Seal Beach Boulevard toward Lampson Avenue and saw Lane driving westbound on Lampson Avenue at a high rate of speed. Lane turned south onto Seal Beach Boulevard from Lampson Avenue against a red light. Officer Sansenbach followed the vehicle southbound on Seal Beach Boulevard until he lost sight of the vehicle as it crossed the 405 freeway at Seal Beach Boulevard.

When Officer Sansenbach reached the intersection of Seal Beach Boulevard and Westminster Boulevard, he was flagged down by an unknown witness. The witness told Officer Sansenbach that the vehicle that he was chasing had turned west on North Gate Road. Officer Sansenbach then drove west on North Gate Road until it terminated at the entrance of the Leisure World retirement community. Officer Sansenbach contacted the security officer at the Leisure World north gate. The security officer told Officer Sansenbach that the white Lexus had entered the north gate without stopping and drove toward the maintenance yard.

Officer Sansenbach observed the white Lexus driving east on Northwood Road and initiated a vehicle pursuit. Lane immediately drove south at a high rate of speed between apartment buildings, trees, and sidewalks, and then drove east on Saint Andrews Drive and crossed Seal Beach Boulevard against a red light.

As Lane exited the Leisure World property, the Anaheim Police Department (APD) helicopter, "Angel," arrived on scene. Lane proceeded southbound in the northbound lanes of Seal Beach Boulevard. He continued on Seal Beach Boulevard and crossed over to the southbound lanes. He drove south on Seal Beach Boulevard and turned west on Westminster Avenue, against a red traffic signal. He then turned south on Road C and proceeded past storefronts at approximately 60 miles per hour. He made an east turn onto Seal Beach Boulevard and accelerated up to approximately 70 miles per hour.

Lane drove the same path again, west on Westminster Boulevard, South on Road C, and east on Seal Beach Boulevard. He then turned north into the parking lot of the Hampton Inn and Suites, located at 2401 Seal Beach Boulevard.

GGPD Officer Gary Coulter, who had been an officer with the GGPD for 15 years, arrived on scene and was monitoring the red channel emergency radio traffic broadcasted by the APD helicopter. Officer Coulter knew that Lane was a parolee at large. Officer Coulter checked his patrol car computer screen and noted that Lane's supervised release file was displayed on the computer screen. He read the computer message and noted that Lane had a prior offense of aggravated assault on police or fire department personnel.

As Lane drove along the west side of the hotel, he exited the vehicle allowing the vehicle to continue through the west parking lot unattended. Lane ran into the hotel lobby and then exited out the east lobby doors. Lane proceeded east along the store fronts of the shopping center, east of the hotel.

At this point, SBPD Detective Dave Barr observed Lane running east through the parking lot toward the Denny's restaurant. Lane then turned north along the east side of the Denny's restaurant. Detective Barr pursued Lane

northbound in his unmarked SBPD detective unit. Lane then ran east toward the Chevron gas station and collided with the front end of Barr's detective unit. Lane fell into the bushes on the east side of the roadway. Lane got up and jumped over the concrete wall that separated the Chevron gas station and the Denny's restaurant. Lane ran east through the Chevron gas station car wash, which was located on the south side of the lot, at 2950 Westminster Boulevard.

John Doe #1 arrived at the Chevron gas station driving a blue 2012 Ford Escape. Doe #1 parked his vehicle on the south side of the gas pump located at the northeast corner of the parking lot. Doe #1 and his two passengers, John Doe #2 and John Doe #3, exited the Escape as Doe #1 began pumping gas. All three occupants were standing on the west side of the Escape watching the police activity in the area. The doors to the Escape were closed and unlocked and the vehicle keys were left inside the ignition.

Lane continued running east through the gas station parking lot toward the gasoline pumps. He then ran east along the right front passenger side of the Escape. He continued around the front end of the vehicle and opened the left front driver's side door and sat down in the left front driver's seat. Doe #1, fearing that Lane was going to steal his vehicle, ran up to the driver's side door and opened it. Lane attempted to put the vehicle into gear by moving the vehicle's center console gearshift. Doe #1 leaned across Lane and put his left hand on the gearshift in an attempt to prevent Lane from putting the vehicle into gear. Doe #1 used a closed fist to strike Lane several times on the left side of his face.

Doe #2, fearing that Lane was going to steal John Doe #1's vehicle, opened the right front passenger door and entered the vehicle. Doe #2 held onto the vehicle's gear shift in an attempt to prevent Lane from putting the vehicle into "drive." Doe #2 struggled with Lane for several seconds before Doe#2 exited the vehicle.

At this point, GGPD Officer Coulter had stopped his marked patrol car on the south curb line in the 2900 block of Westminster Boulevard, west of the Chevron gas station. Officer Coulter was wearing a GGPD issued uniform consisting of dark blue pants, a dark blue shirt with GGPD patches on the shoulders, a GGPD badge affixed to the left chest area, and a black duty belt with a service pistol. Officer Coulter exited his patrol car, unholstered his service pistol, and ran along the south sidewalk of Westminster Boulevard. Officer Coulter observed a Chevron gas station cashier waving his arms and pointing toward the gasoline pumps at the east end of the Chevron gas station.

Officer Coulter ran eastbound toward the gasoline pumps. As he approached, a civilian witness, John Doe #4, directed him toward the Escape and said, "No, he is in the car," and pointed at Lane. Officer Coulter observed Doe #1 leaning in a "plank" position half in and half out of the driver's side door of the Escape. Officer Coulter approached the driver's side door with his service pistol in his right hand and observed the struggle between Doe #1 and Lane. Officer Coulter yelled, "Get away!" Doe #1 stopped struggling with Lane and moved away from the vehicle.

Officer Coulter observed Lane seated in the left front driver's seat. He described Lane as being in his late thirties, with an acne-pocked face and visible tattoos on his arms. Officer Coulter said, "Stop!" as he used his left hand to grab Lane by his left arm, in an attempt to pull him out of the vehicle. As Officer Coulter pulled on Lane, Lane's body lifted up slightly. Lane pulled away from Officer Coulter's grasp and twisted at the waist, to the right, and bent down toward the center console area.

Officer Coulter was still standing at the open left driver's side door of the Escape when he felt the Escape begin to move forward in an easterly direction. Officer Coulter then fired six rounds from his service pistol at Lane.

Officer Coulter reached into the vehicle and grabbed Lane by the left arm and dragged him out of the vehicle. He placed Lane face down and handcuffed Lane's hands behind his back. Later, Corporal Robert Thome of the Los Alamitos Police Department found a black folding knife with a 2.5 inch blade concealed in Lane's left front waist band.

At approximately 4:56 p.m., Orange County Fire Authority personnel were dispatched to the incident scene in reference to a possible gunshot wound patient. Lane was transported to Long Beach Memorial Medical Center. At approximately 5:24 p.m., Lane arrived at Long Beach Memorial Medical Center (LBMMC). When Lane arrived in the trauma room, he was in traumatic full cardiac arrest. The treating physician concluded that Lane was dead on arrival, and pronounced Lane deceased at approximately 5:27 p.m..

Voluntary, Consensual Statement of Officer Coulter

Officer Coulter gave a voluntary, consensual statement to the OCDA on Dec. 11, 2012.

After having learned that Lane was fleeing police and driving on the wrong side of the road, Officer Coulter stated that he believed that Lane did not have "regard of anybody else's safety" and was "determined to get away," reaffirming the latter belief multiple times throughout the interview.

During his physical struggle with Lane, Officer Coulter believed that Lane was trying to steal the Escape. After Officer Coulter reached for Lane within the driver's seat, Lane turned towards the center console. At this point, Officer Coulter believed that was "going for some type of weapon there." Officer Coulter continued:

"Now he's already struggling with the one guy, the victim of the car. He's already struggled with him. When I came up on them, I remember seeing him already climb in that area, committed to...um, and then back away. I get into the car; start to try to pull him away. He's committed to that area, um thinking he's going for a weapon. Um, you know, I think the, I guess the entire circumstances that, um, I'm thinking that he's going for a weapon. His prior history, uh, and just he's committed to getting away that, you know, his actions affect everything led up to that point. He's committed to getting away at all cost."

Officer Coulter, knowing that he was at a gas station, also recognized the possibility of an explosion if Lane were able to discharge a firearm. Additionally, though he did not have a good visual of the back seat, Officer Coulter believed that he saw a child's car seat.

Officer Coulter feared for his safety and the safety of people in the vicinity. He stated: "...I fear this guy's gonna kill me or kill someone." He noted that he was in "a crowded parking lot" with "cars on the other side of [the] gas pumps" and "people running all around." When the vehicle moved forward, Officer Coulter believed that Lane had obtained "control of the car." Buttressed by his belief that Lane was "committed to getting away," Officer Coulter feared that Lane might "end up killing me, killing someone as he's fleeing going into opposite lanes of traffic. He's going to hurt someone, kill someone." As a result of these circumstances, Officer Coulter said he shot Lane.

Autopsy

On Dec. 3, 2012, at approximately 9:00 a.m., Dr. Aruna Singhania, Orange County Sheriff-Coroner Forensic Pathologist, conducted the post-mortem examination of Lane.

During the autopsy, the following items of evidence were collected: one bullet from lower abdomen; one bullet from abdomen (belly button); one bullet from chest; one bullet jacket and core from right chest cavity; fragments from left shoulder, left elbow, and chest; fingernail, knuckle, and cheek swabs; deep muscle tissue; possible gun powder particles.

Following the autopsy, Doctor Singhania opined that the cause of death was intrathoracic hemorrhage due to multiple gunshot wounds to the body.

EVIDENCE COLLECTION

Six cartridge cases marked "Winchester 40 SW" were collected by OCCL criminalists at the scene of the shooting.

Officer Coulter's Glock model 22, .40 caliber semi-automatic pistol was collected.

EVIDENCE ANALYSIS

Toxicology Examination

The OCCL conducted a toxicological exam on Lane's post-mortem blood sample for prescription drugs and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS
Amphetamine	Postmortem blood	0.49 mg/L
Methamphetamine	Postmortem blood	1.5 mg/L

Weapons Examination

An OCCL forensic scientist test fired Officer Coulter's pistol using ammunition from the laboratory reference collection. The pistol operated without malfunction.

The forensic scientist compared the six .40 caliber Smith & Wesson expended cartridges cases collected from the shooting scene to cartridges test fired from Officer Coulter's pistol. The cartridges from the shooting scene were identified as having been fired in Officer Coulter's Glock pistol. These cartridge cases account for all six cartridges missing from the total number of cartridges carried by Officer Coulter.

LANE'S PRIOR CRIMINAL HISTORY

Lane had a State of California Criminal History Record dating back to 1994. Between 1994 and 2012, the relevant portions of Lane's record which would likely be admissible in a trial were police officers charged with a crime based upon this shooting include convictions for the following violations:

1. Assault with a deadly weapon against a police officer
2. Child cruelty
3. Evading a peace officer
4. First degree burglary
5. Grand theft
6. Possession of a dangerous weapon
7. Vehicle theft

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

In order to convict an officer of any crime stemming from an incident such as this, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in this case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. *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 the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. 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 court 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 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.

Further, the Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 505 permits a person to use deadly force to defend himself or others from attack if, as a reasonable person, he had grounds for believing and did believe that he or another faced imminent death or that great bodily injury was about to be inflicted upon him or upon another person.

The law as detailed in CALCRIM 505 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 death or great 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. Under the doctrine of defense of others, the reasonableness of the actions taken by the person is assessed from his point of view, not from the point of view of those whom he is defending. *People v. Genovese* (2008) 168 Cal. App. 4th 817, 829-830.

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. *People v. Martin* (1985) 168 Cal. App. 3d 1111, 1124. Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others.”

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force [i.e., his 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 evolving.” *Id.* at 397. Thus, the Court cautioned that “[t]he 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 396.

Where potential dangerous, emergency conditions or other exigent circumstances exist, the Supreme Court’s definition of reasonableness is comparatively generous to the police. Thus, as the California Courts of Appeal held in a recent case, “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.” (*Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 528.). That same court continued:

“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.

The courts’ analysis and teachings in *Graham* and *Brown*, *supra*, are very much applicable to the circumstances surrounding the interaction of Officer Coulter with Lane.

LEGAL ANALYSIS

The central issue to be addressed is whether Officer Coulter’s act of shooting Lane was legally justified, either under a theory of self-defense, defense of others, or apprehension of a fleeing felon. In order to justly charge and convict Officer Coulter for this shooting, it would be the prosecution’s burden to prove beyond a reasonable doubt that Officer Coulter’s actions were not covered by any of these justifications. We conclude that we cannot meet that burden, because there is substantial evidence to prove that Officer Coulter was justified in using force.

The first element of the legal justification of self-defense or defense of others is that force is used under the actual belief of the necessity to defend oneself or others. Here, Officer Coulter, a 15-year veteran of the GGPD, told investigators that he shot Lane because he was fearful that Lane was about to kill or seriously injure him or the bystanders. This belief was based upon the following facts:

- Before arriving at the scene of the shooting, Officer Coulter already believed that Lane posed a significant safety threat. Officer Coulter was on notice that Lane had a prior offense of aggravated assault on a police officer. Moreover, upon hearing about the police pursuit of Lane, which involved Lane driving against traffic on the wrong side of the road, Officer Coulter believed that Lane was determined to escape from the police and was paying no heed to the safety of others as he attempted to do so.
- During his struggle with Lane, Officer Coulter believed that Lane was grabbing for a weapon when he was intently reaching towards the center console of the vehicle. According to Officer Coulter, this belief was based on the “entire circumstances,” including Lane’s prior history of aggravated assault, the danger that Lane caused in the police chase, his efforts to carjack the Escape from its rightful occupants, and his movement toward the center console.
- When the vehicle began to move forward, Officer Coulter feared that Lane would kill him or any of the number of bystanders in the area with the vehicle; Officer Coulter believed that Lane was committed to fleeing from the police and would do whatever necessary in order to do so.

Consequently, it could not be proved that Officer Coulter did not honestly believe he needed to shoot Lane in order to defend himself or others.

The second requirement for the legal justification of self-defense or defense of others is that the belief in the necessity to defend oneself or others is reasonable. We conclude that Officer Coulter's belief that he needed to defend himself and the bystanders was reasonable, based upon the following evidence:

- Lane had a prior record of aggravated assault on police or fire department personnel.
- Lane had exhibited dangerous behavior and disregard for the safety of others during the preceding police chase when he ran red lights and drove on the wrong side of the road.
- Lane had already used violence in trying to repel the efforts of John Doe#1 and #2 to retake control of the Escape; Lane's conduct toward Doe #1 and Doe#2 constituted the crime of carjacking.
- After Officer Coulter reached the Escape that Lane had entered, Officer Coulter told Lane to "Stop." Lane did not obey, resulting in a physical altercation between Officer Coulter and Lane.
- Officer Coulter was vulnerable in his close proximity to Lane when attempting to pull Lane from the vehicle.
- Lane had his back turned to Officer Coulter as Lane was intently reaching towards the center console of the vehicle, and Officer Coulter could not see Lane's hands or what Lane was reaching for.
- Officer Coulter believed that there might have been another passenger in the vehicle because he thought he saw a child's car seat.
- Because the struggle was taking place at a gas station, an explosion could occur if Lane were able to fire a gun.
- There were several bystanders in the immediate vicinity of the vehicle.
- Because Officer Coulter was only halfway in the vehicle when struggling with Lane, Officer Coulter was in a vulnerable position when the vehicle began to move forward.

Officer Coulter indicated that at this point he was in fear for his life and the lives of the bystanders. We conclude that Officer Coulter's fear for his own safety and for the safety of others was reasonable under the circumstances.

The third element required for the legal justification of self-defense is that the force used be no greater than that which is required under the circumstances as they reasonably appear to the threatened person. Here, the apparent threat as it reasonably appeared to Officer Coulter was that Lane was about to use a weapon or the vehicle to kill or seriously injure Officer Coulter or a bystander. The courts counsel that "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, supra*, 171 Cal.App.4th at 528) Under these circumstances, we conclude that we could not disprove beyond a reasonable doubt that it was unreasonable for Officer Coulter to respond with lethal force.

To sum up, in order for Officer Coulter to be convicted of a crime for this shooting, it would be the prosecution's burden to prove beyond a reasonable doubt to a unanimous jury that Officer Coulter did not act in reasonable and justifiable self-defense or defense of others when he shot Lane. As should be apparent from the foregoing analysis, the prosecution would be unable to carry this burden in this case. Given "the fairly wide zone of protection" that is afforded to police officers in situations such as this one, *Brown v. Ransweiler, supra*, 171 Cal. App. 4th at 528, the circumstances delineated above indicate that Officer Coulter acted in justifiable self-defense and defense of others, and his decision to fire at Lane does not constitute a crime. Additionally, for the same reasons laid out above, it would not be possible to disprove the applicability of the justification of apprehension a fleeing felon, set forth in Penal Code section 835a. A jury analyzing these facts would likely conclude that it was reasonable for Officer Coulter to believe that his life and the lives of the numerous bystanders were in danger, and thus that he was justified when he shot and killed Lane.

CONCLUSION

Based on all 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 Coulter, and that there is significant evidence that Officer Coulter's actions were legally justified, when he shot Lane on Dec. 1, 2012.

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

Very truly yours,



SCOTT A. SIMMONS

Senior Deputy District Attorney
Homicide Unit



Read and Approved by **Dan Wagner**
Assistant District Attorney
Head of Homicide Unit