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October 2, 2012

Chief Kevin Raney
Garden Grove Police Department
11301 Acacia
Garden Grove, CA 92804

Re: Officer Involved Shooting on January 26, 2011
Fatal Incident involving Joao Kerubin Palma
District Attorney Investigations Case # 11-005
Garden Grove Police Department DR # 11-01276
Orange County Crime Laboratory FR # 11-41261

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 Bryan Devor, in which Joao Kerubin Palma, 16, of Garden Grove, died as a result of his injuries. The incident occurred in the City of Garden Grove on Jan. 26, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Jan. 26, 2011 fatal officer-involved shooting of Palma. 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 officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Jan. 26, 2011, OCDA Special Assignments Unit (OCDASAU) Investigators responded to this incident. During the course of this investigation, OCDA Investigators conducted 32 interviews and reviewed the following: GGPD reports, GGPD police radio traffic, in-car video from Garden Grove Police patrol vehicles, Garden Grove Fire Department (GGFD) reports, Orange County Crime Laboratory (OCCL) reports, autopsy reports, incident scene photographs and other relevant reports and materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and 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 officers, specifically Officer Devor. The OCDA will not be addressing 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.

All GGPd officers involved in this incident, including Officer Devor, provided voluntary statements to OCDA Investigators in the early morning hours of Jan. 27, 2011, approximately four to five hours after the shooting.

FACTS

This incident involved the following members of the GGPd Career Criminal Apprehension Team (CCAT): Officer Devor, Officer Paul Tessier, Officer Jim Franks, and Officer John Bankson.

CCAT members use department-issued "Nextel" cellular telephones, which include a two-way radio feature. Additionally, their Nextel telephones have the ability to broadcast on a group setting whereby one member can transmit to all other members of the group. Each CCAT officer is assigned a department-issued, un-marked police vehicle. The CCAT officers were dressed in plain clothes at the time of this incident.

On Jan. 26, 2011, at approximately 9:15 p.m., the GGPd CCAT was on surveillance when they collectively decided to pair up in two vehicles and drive to Midway City to look for the subject of their surveillance. To that end, they convened at a parking lot at the intersection of Galway Street and Garden Grove Boulevard.

At approximately 9:30 p.m., all four CCAT officers observed a Chevrolet Malibu pull into the same parking lot and park. Fidel G. was driving, Amber D. was the right front passenger, and Palma was in the rear seat. At approximately the same time, Officer Bankson observed an Asian woman walking eastbound from the parking lot into the north alley of Belfast Drive.

All four CCAT officers observed Palma exit the Malibu and run eastbound into the north alley of Belfast Drive, where Officer Bankson just observed the Asian woman walking. Officer Bankson also observed Palma holding an unknown object in his right hand.

Officers Devor and Franks contacted Officers Tessier and Bankson via Nextel and requested they maintain a clear view of the Malibu so they could proceed into the alley to investigate.

The Asian woman was walking eastbound in the alley headed toward her residence when she observed Palma running toward her with a knife in his right hand. Palma took the Asian woman's cellular telephone and lipstick, the only property she possessed at the time, and then ran westbound in the alley, back in the direction from which he came.

Officers Tessier and Bankson drove eastbound into the alley and observed Palma walking quickly westbound out of the alley back toward the parking lot. After driving past him, they observed the Asian woman, who does not speak English and who appeared scared, sitting in a curled-up position on the ground. They asked her if she had been robbed. She gestured with her hands, describing an object approximately eight to 12- inches long, and said "rifle." Officers Tessier and Bankson advised Officers Devor and Franks via Nextel to stay with the Malibu, as its occupants may have been involved in a robbery.

Officers Devor and Franks observed the Malibu exit the parking lot at a high rate of speed with its tires squealing. The Malibu pulled onto Galway Street headed northbound and stopped for a red light at Garden Grove Boulevard. Officers Devor and Franks exited onto Galway Street and stopped directly behind the Malibu.

Believing the occupants of the vehicle had been involved in a robbery, Officer Devor decided to detain the vehicle while it was stopped at the red light. Officer Devor exited the driver's side of his car and began walking toward the Malibu. Officer Devor was wearing black tennis shoes, blue jeans, a gray t-shirt, and a backward ball cap on his head. Officer Devor had his GCPD badge on a lanyard hanging around his neck. As he exited his vehicle, Officer Devor pulled his badge out from underneath his shirt so that it was visible.

Officer Devor, who is left-handed, drew his Glock pistol from the holster on his left hip and held his pistol close to the left side of his body as he advanced on the car. Officer Devor observed Palma seated in the left rear seat behind Fidel G., the driver.

With his right hand, Officer Devor knocked on the driver's window and held his police badge away from his chest to display it to Fidel G. while he verbally identified himself as a police officer and directed Fidel G. to turn off his car. Fidel G. looked at Officer Devor, then turned and looked forward as the car began to move slowly forward. Officer Franks was slower than Devor in exiting their vehicle and was standing near the front bumper of Officer Devor's vehicle when he heard Officer Devor say, "Police, stop."

Palma reached through the open left rear window and grabbed Officer Devor's right forearm with his left hand while he raised his right hand toward Officer Devor holding an unknown object. Officer Devor believed Palma was going to assault him with the unknown object.

As this occurred, Officer Devor heard the Malibu's engine "rev" and the car began to pull forward toward the Garden Grove Boulevard intersection. Officer Devor began to step quickly next to the car to avoid being dragged while Palma was still holding onto his arm.

During his interview with OCDA Investigators, Officer Devor described his mindset at that point in time: "So as soon as that happens...I'm in obviously – this is a bad spot. This guy's – in my mind, okay, this guy is trying to kill me... And so at that point, I figure that...that's basically my only...my only option, either to...to shoot, this person to stop his attack on me, or damn, I'm gonna be killed by one of the...one of the issues there, either being drug or being beaten, stabbed, shot, whatever it happens to be that he had there."

As a result of this fear, Officer Devor fired three rounds from his pistol. Officer Devor then broke free of Palma's grip and the Malibu fled westbound on Garden Grove Boulevard. Officer Devor then discovered that he had been stabbed by Palma in his upper right arm.

CCAT officers transmitted on their police radios that an officer-involved shooting had occurred and described the Malibu, including its license plate number.

At approximately 9:34 p.m., GGPd dispatch received a 911 call from Amber D. reporting her friend had been shot.

At approximately 9:36 p.m., GGPd patrol officers located the Malibu parked at the west curb of Magnolia Avenue south of Garden Grove Boulevard. Palma was slumped over in the rear seat and appeared to have a gunshot wound to his head. GGPd officers, and then GGFD personnel, attempted rescue efforts; however, Palma could not be revived and was pronounced deceased at the scene.

Fidel G. and Amber D. were standing on the sidewalk next to the vehicle. Fidel G. identified himself as the driver and Amber D. identified herself as the right front passenger of the vehicle. Amber D., who had an apparent grazing gunshot wound on her upper left arm, was transported to Garden Grove Medical Center. The minor wound required no sutures and she was released from the hospital a short time later.

Inside of the Malibu, GGPd officers located the Asian woman robbery victim's cellular telephone on the right rear floorboard and her lipstick underneath the right front passenger seat. A folding knife with apparent blood on the blade and the handle was on the passenger side rear floorboard.

AUTOPSY

On Jan. 27, 2011, at approximately 9:00 a.m., Forensic Pathologist Anthony Juguilon conducted an autopsy on Palma at the Orange County Sheriff-Coroner Forensic Science Center. Doctor Juguilon determined the cause of death to be a gunshot wound to the left rear portion of Palma's head.

EVIDENCE ANALYSIS

FIREARMS EXAMINATION:

OCCL Forensic Scientist Thomas Matsudaira completed the firearms and projectiles examination in reference to this case. He test-fired Officer Devor's gun, a Glock model 27 pistol, .40 S&W caliber, with serial #NDE673. The Glock pistol operated without malfunction. Matsudaira compared casings and projectiles from his test fires with projectiles and casings recovered during the autopsy and from investigation of the crime scene. Matsudaira found that the projectile retrieved from the brain of Palma, and the two projectiles retrieved from the interior of the Malibu were consistent with having been fired from Officer Devor's pistol. Matsudaira identified the cartridge cases from the scene as having been fired from Officer Devor's pistol.

TOXICOLOGICAL EXAMINATION:

A sample of Palma's blood was tested for common substances, with the following results:

DRUG	MATRIX	RESULT
Ethanol	Postmortem Blood	0.14%
Methamphetamine	Postmortem Blood	0.048 mg/L
Amphetamine	Postmortem Blood	0.016 mg/L

DNA TYPING

The knife found on the rear floorboard of the Malibu was swabbed. DNA was extracted from the swabs and compared to the DNA profile of Palma. Palma was found to be the major contributor of DNA from swabs taken from the knife handle and the knife blade.

BACKGROUND INFORMATION

Palma's California Criminal History was reviewed and taken into consideration.

LEGAL PRINCIPLES

Homicide is the killing of one human being by another. To prove that a person is guilty of murder, the prosecution is required to prove beyond a reasonable doubt, based on lawful and reliable evidence, the following elements:

1. The person committed an act that caused the death of another human being;
2. When the person acted he had a state of mind called malice aforethought; and
3. He killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he acted he knew his act was dangerous to human life, and he deliberately acted with conscious disregard for human life. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes.

A homicide committed with malice aforethought but in a situation called "imperfect self-defense" is deemed to be voluntary manslaughter. "Imperfect self-defense" occurs when a person kills another person in the actual but unreasonable belief in the necessity to defend against imminent peril to life. Similarly, a homicide committed with malice aforethought but in a situation called a "sudden quarrel or heat of passion" is deemed to be voluntary manslaughter. The "sudden quarrel or heat of passion" which provokes the person who kills must be of the character and degree as naturally would arouse the mind of a reasonable person in the same circumstances to act rashly and without deliberation in order for a homicide committed with malice aforethought to be reduced to voluntary manslaughter.

Penal Code section 835a states that "any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance." In addition, Penal Code section 834a requires that if a person has either actual or constructive knowledge that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

The Criminal Jury Instructions as written by the Judicial Council of California are referred to as CALCRIM instructions. CALCRIM 505 provides that a person who reasonably believes that he/she is in imminent danger of being killed or suffering great bodily injury is permitted to defend himself/herself from attack, if as a reasonable person, he/she had ground for believing and does believe that death or great bodily injury is about to be inflicted upon him/her or upon another person. In doing so, such person may use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the death or injury which appears to be imminent.

The law as stated in CALCRIM 505 and in well-settled appellate court opinions permits a person, if confronted by the appearance of danger which arouses in his/her mind as a reasonable person an honest fear and conviction that he/she or another person is about to suffer 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.) In evaluating the reasonableness of a person's actions in response to perceived danger, one must take into account all the circumstances known to that person, including any previous acts of violence or threatened violence committed by the person perceived to be dangerous. (*People v. Pena* (1984) 151 Cal.App.3d 462, 475). Furthermore, in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, the United States Supreme Court held that an officer's right to use his weapon is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The High Court further opined that the "calculus of

reasonableness 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." The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding Officer Devor's shooting of Palma.

ANALYSIS

When Officer Devor shot Palma, the circumstances known to him were the following:

- The occupants of the Malibu, including Palma, had apparently just committed a robbery, as reported to Officer Devor by his partners;
- Officer Devor, in an attempt to detain the occupants of the Malibu for suspicion of robbery, approached the Malibu, identified himself as police officer, showed his badge, and told Garcia (the driver) to turn off the engine;
- Palma then reached out from the left rear window, grabbed Officer Devor's hand, and raised an unknown object with his other hand in what appeared to Officer Devor to be an attempt to assault Officer Devor with the object (Officer Devor was correct; Palma stabbed Officer Devor in the arm with a knife);
- As Palma was holding onto Officer Devor's arm, Garcia began to drive the car forward, causing Officer Devor to be pulled alongside the car.

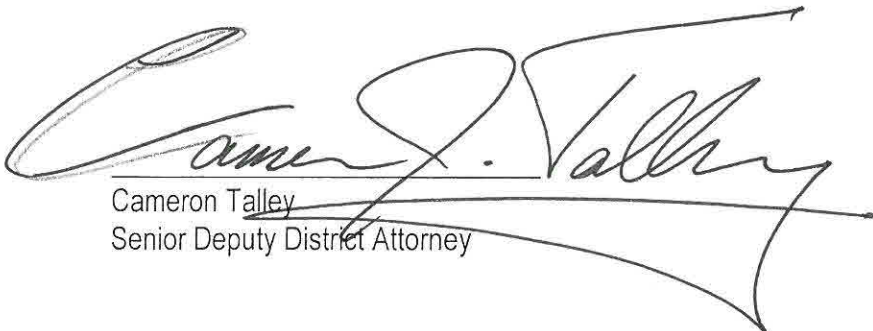
At that moment, Officer Devor feared for his own life, both from the assault by Palma and by the danger of being dragged and/or run over by the rear tires of the car. Therefore, he fired his gun three times at Palma.

Officer Devor's shooting of Palma comes within the legal justification of self-defense. He was in danger of great bodily injury or death and acting out of that fear alone he used reasonable force to defend himself. Consequently, his actions did not violate criminal law.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officer Devor, and there is substantial evidence that the officer acted reasonably under the circumstances.

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



Cameron Talley
Senior Deputy District Attorney



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