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July 11, 2014

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

Re: Officer Involved Shooting on August 20, 2011
Fatal Incident involving Peter Ray Bassett
District Attorney Investigations Case # SA 11-015
Garden Grove Police Department DR # 11-11341
Orange County Crime Laboratory Case # FR 11-51395

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 Eduardo Barajas. Peter Ray Bassett, 41, Garden Grove, died on Dec. 26, 2012, from respiratory failure and chronic obstructive pulmonary disease. The incident occurred in the City of Garden Grove on Aug. 20, 2011.

OVERVIEW

This letter contains a description of the scope of, and the legal conclusions resulting from, the OCDA's investigation of the Aug. 20, 2011, officer-involved shooting of Bassett. 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 Aug. 20, 2011, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 50 witnesses and obtained and reviewed the following: GGPD reports, audio recordings, patrol car videos and dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Bassett; criminal history records related to Bassett including prior criminal history records and prior incident reports; the personnel records of Officer Barajas; 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 GGPD officers or personnel,

specifically Officer Barajas. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

An important component of these investigations is the statements of the involved officers. Officer Barajas gave a voluntary statement to OCDA Investigators on Aug. 25, 2011.

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.

FACTS

On Aug. 20, 2011, at approximately 2:14 a.m., Bassett called 911 and spoke to a GGPd dispatcher. Bassett stated, "I just committed suicide." He advised that he had cut into his right arm, trying to hit a vein, and he had ingested "a bunch of pills." He added that he was "outside," at an address on Ferndale Drive in the City of Garden Grove, and he had a 5-inch knife which was "shaped as a saw" still in his hand. He also stated he had cut his other arm and thought he hit an artery. Bassett concluded the call by stating, "I hate myself," and disconnecting the call.

At approximately 2:16 a.m., GGPd Officer Barajas was dispatched to respond to Bassett's attempted suicide call. Garden Grove Fire Department Engine 5 was also dispatched to the address on Ferndale Drive regarding the attempted suicide. Engine 5 was advised to stage/stand by in the area. GGPd Officer Adam Coughran advised he would respond as the follow-up officer. Officer Coughran knew Officer Barajas was a single person unit, and no other officers were dispatched to assist him. Officer Coughran was responding to a different call, but cleared from that call in order to back up Officer Barajas, even though the call was outside Officer Coughran's designated patrol area.

At approximately 2:20 a.m., Officer Coughran arrived in the area of the call. Officer Coughran parked on Brookdale Drive, northwest of Ferndale Drive. The six minute delay between the time of the call and Officer Coughran's arrival in the area made Bassett's exact location unknown until he could be visually identified. Officer Coughran approached Bassett's location on foot to provide himself additional safety and tactical advantage, as there could have been multiple people on the street in the area to the front of the caller's house, and it prevented Officer Coughran from being ambushed or attacked while attempting to get out of his patrol car to investigate.

Officer Coughran exited his patrol unit and, due to the known circumstances of the 911 call by Bassett, he armed himself with his duty-issued, less-lethal, bean bag shotgun. Officer Coughran walked southbound on Ferndale Drive.

Officer Barajas arrived in the area and turned north on Ferndale Drive from Oakdale Drive. While driving north on Ferndale Drive, he observed Bassett standing on the east sidewalk area next to a home on Ferndale Drive. This was directly across the street from Bassett's residence. Officer Barajas illuminated Bassett with his patrol car's spot light

and observed blood on both of Bassett's arms. Officer Barajas, not knowing Officer Coughran's exact location, activated his patrol car's overhead emergency lights to alert Officer Coughran of his location. Officer Barajas parked his car in the middle of the street, exited his patrol car, and walked toward Bassett.

Officer Coughran walked southbound on Ferndale Drive and observed Officer Barajas driving north on Ferndale Drive with his patrol unit's spotlight activated and directed in a northeast direction. The patrol unit's overhead emergency lights were activated and Officer Coughran heard Officer Barajas advising on the police radio that he was with Bassett. Officer Coughran moved to the east sidewalk and observed the silhouette of Bassett's shoulders and head up against a wall. He was approximately 50 to 60 feet north of the silhouette. Officer Coughran pointed his less-lethal shotgun toward Bassett as he continued walking southbound. Officer Coughran positioned himself on the north side of a minivan, which was parked along the east curb. He was now one car length north of Bassett.

As Officer Barajas was walking in the street toward Bassett, he observed a knife in Bassett's right hand, and the knife appeared to have a serrated blade. He told Bassett to throw the knife down, and Bassett threw the knife onto the street. As Officer Barajas continued walking closer to Bassett, Bassett used his right hand and reached to the center of his waistline, directly over his groin. Officer Coughran also witnessed this threatening movement. Fearing Bassett was reaching for a weapon in his waistband, Officer Coughran deployed one bean bag round at Bassett; however, Bassett did not react to the bean bag round.

Officer Barajas and Officer Coughran then observed Bassett withdraw an apparent black semi-automatic pistol from his waist area. Officer Coughran put down his shotgun to transition to his duty weapon. Based on his training, Officer Barajas believed the pistol was a "1911" black .45 caliber pistol. Bassett began to raise the pistol toward Officer Barajas, so Officer Barajas withdrew and fired his duty weapon at Bassett. Officer Barajas fired 10 rounds, striking Bassett once on the top of his head, at which time Bassett fell to the ground.

As Bassett fell to the ground, Officer Barajas' weapon malfunctioned due to an apparent cartridge mis-feeding. The malfunction caused Officer Barajas to stop shooting. Officer Barajas observed Bassett's pistol on the ground by Bassett's feet, so he cleared the weapon malfunction and reloaded.

Officer Coughran also observed Bassett extend his arm forward and point his pistol directly toward Officer Barajas. Officer Coughran heard approximately 10 to 14 consecutively-fired gunshots. Officer Coughran advanced toward Bassett, who was then lying on his left side. Officer Coughran observed Bassett's pistol on the sidewalk at the base of Bassett's feet. Officer Coughran used his foot to move the pistol away from Bassett. Officer Barajas also approached Bassett.

Officer Coughran searched Bassett for additional weapons, with none located. Officer Coughran observed Bassett had a gunshot wound to his head and blood across his left arm. Officer Barajas retrieved a first aid bag from his patrol unit and used a pair of scissors to cut Bassett's shirt off. Additional GGPd personnel arrived to assist with medical aid.

Nearby residents witnessed the incident. According to one witness, Officer Barajas was in the middle of the street and approaching Bassett. Officer Barajas told Bassett, "Put down your weapon," or, "Put your weapon down, get on the ground," or something similar. While Bassett stepped forward onto the east sidewalk toward Officer Barajas, Bassett was moving his hands and slightly raising his arms toward Officer Barajas. Bassett was approximately 20 feet from Officer Barajas when the witness focused his attention toward Officer Coughran instead. At this point, the witness heard Officer Barajas fire approximately 12 consecutive gunshots.

A second witness heard Officer Barajas yell either, "Put down the weapon," or "Drop the weapon," while Bassett reached toward his right side and then raised his right arm and pointed his right hand toward Officer Barajas. The second witness said Bassett had an object in his right hand as he pointed it toward Officer Barajas, and it appeared that Bassett was going to shoot at Officer Barajas. Officer Barajas then fired at least 10 gunshots at Bassett.

This shooting was captured by Officer Barajas' patrol unit mobile video system. Based on the review of Officer Barajas' patrol unit mobile video, approximately 20 seconds elapsed between the time Officer Barajas exited his patrol car to the time shots were fired.

Paramedics arrived on scene, and Bassett was transported by ambulance to the University of California, Irvine Medical Center (UCI-MC) for further treatment. He was treated for a single gunshot wound to the head by medical staff at UCI-MC. Bassett survived the gunshot wound and was transferred to Windsor Palms Care Center (WPCC), a skilled psychiatric nursing facility.

While at WPCC, Bassett was unable to walk or eat on his own. He did not have the ability to make decisions for himself and suffered from mental illness. According to his doctor, he was treated there for diabetes, high blood pressure, seizure disorder and blood clot problems.

On Dec. 9, 2012, Bassett was admitted to the Los Alamitos Medical Center Intensive Care Unit for pneumonia and acute respiratory distress syndrome. Doctors recommended a breathing tube and feeding tube, but Bassett's family declined.

Bassett died on Dec. 26, 2012, one year and four months after the officer-involved shooting incident. The causes of death listed on his death certificate were respiratory failure, acute respiratory distress, pneumonia and Chronic Obstructive Pulmonary Disease (COPD). The doctor said the gunshot wound could have contributed to Bassett's death, but he could not say for sure because Bassett was a smoker. Bassett reported smoking one pack of cigarettes per day for the last 20 years of his life.

Voluntary Statement of Officer Barajas

Officer Barajas gave a voluntary, consensual statement to the OCDA on Aug. 25, 2011.

On Aug. 20, 2011, Officer Barajas was a patrol officer with the City of Garden Grove. He was working a patrol assignment in a single-person, marked black and white police car with full overhead light bar. He was wearing a standard navy blue police uniform with badge, GGPD patches on both sleeves, and a leather equipment belt with a variety of tools on it including his firearm/handgun in a holster, extra magazines with bullets, handcuffs, and police radio, among other things.

Officer Barajas was dispatched to a call for a male trying to commit suicide and heard the dispatch center trying to find an additional unit to back him up, as all units were busy responding to other incidents at the time. He heard Officer Coughran announce that he was breaking away from a different call to back up Officer Barajas.

When Officer Barajas arrived, he saw a male, later identified as Bassett, standing on the sidewalk of Ferndale Drive holding a knife. He illuminated Bassett with his spotlight and also turned on his overhead red/blue lights. Officer Barajas got out of his car and told Bassett to put down the knife. Bassett threw the knife to the ground. Officer Barajas could see blood coming out of both of Bassett's arms.

Officer Barajas said he moved closer to Bassett and told him to remove his backpack. At that time, he saw Bassett reach down the front of his shorts and pull out what looked like a black Colt model 1911 .45 caliber semi-automatic handgun. Bassett began raising the handgun toward Officer Barajas. Officer Barajas pulled out his duty handgun and began firing at Bassett as Bassett was pointing what appeared to be a black Colt firearm at him (later determined to be a pellet gun which resembled a semi-automatic handgun).

Officer Barajas said he thought he fired between six and nine times. Officer Barajas saw Bassett fall to the ground. Meanwhile, Officer Barajas realized his own firearm had jammed. Other officers reached the scene to assist and no further shots were fired. Officer Barajas said he thought Bassett was going to kill him by shooting him. Officer Barajas was unsure whether Bassett was afforded sufficient time to fire any bullets at him.

Bassett did not make any statements at the time of this shooting incident. Later, on November 2, 2011, Investigator Carlos Field from the OCDA Bureau of Investigation contacted Bassett for a statement about the shooting incident, but Bassett refused to provide one.

Background Information

Bassett did not have a California criminal history.

Evidence Collected or Memorialized at the Scene

The following items were collected or photographed at the scene:

- Black "Marksman" BB/Pellet gun resembling a semi-automatic handgun
- Black folding knife with apparent blood on it
- 10 .45 caliber cartridge casings
- Two cartridges
- One handgun magazine with cartridges
- 14 apparent bullet fragments
- One less-than-lethal shotgun
- One less-than-lethal projectile with plastic cap
- Backpack
- Knit cap
- Wallet with keys
- Cell phone
- Cigarette pack
- And patrol car video and photographs of all evidence and apparent bullet strike marks

Evidence Analysis

A toxicology examination was performed by the Orange County Coroner's Office in conjunction with the autopsy. The blood samples used for the analysis were obtained from the hospital where Bassett was treated. Presumptive screening was performed for benzodiazepines, cocaine and/or metabolite, methamphetamine and/or related compounds, opiates, cannabinoids (THC and/or related compounds). Testing was performed for the presence of alkaline drugs, benzodiazepines, THC and its metabolite, and THCA. The following drugs were confirmed by testing: Norsertraline, Sertraline, Trazodone, 11-nor-9-carboxy-delta-9-tetrahydrocannabinol (THCA), Aminoclonazepam, and Clonazepam.

Officer Barajas' Glock Pistol, Model 21, .45 caliber semi-automatic was test fired four times and jammed twice at the top of the chamber. Bullets and fragments from the scene were compared to the Glock Pistol and all shared similar characteristics with test fired rounds from the pistol.

DNA was obtained from the blade of the knife recovered at the scene and Bassett could not be eliminated as the source of that DNA. The frequency of choosing an individual at random who could be a possible source of that DNA is rarer than one in one trillion unrelated individuals.

A mixture of DNA from at least two individuals was obtained from the handle of the knife. Assuming only two contributors, the acceptable genotypes for the major and minor contributor were deduced. Bassett cannot be eliminated as the major contributor to the mixture.

Mixtures of DNA from multiple individuals were obtained from the pellet gun's slide and grip. Assuming Officer Coughran was one of the two main contributors to these mixtures, the acceptable genotypes of the second main contributor to these mixtures was deduced. Bassett cannot be eliminated as the second main contributor to those mixtures.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

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.

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 justification 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.

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Officer Barajas with Bassett.

LEGAL ANALYSIS

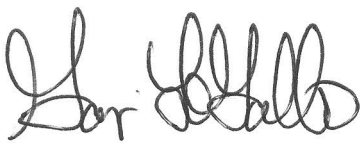
The first issue to analyze is whether or not the gunshot wound contributed to Bassett's death such that it was a substantial factor in causing his death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death. Because Bassett died from lung disease (COPD), acute respiratory distress and pneumonia approximately one and one half years after the gunshot wound to his head was received, it being reported he smoked one pack of cigarettes per day for the last 20 years of his life, and the doctor treating him being unable to conclude the gunshot wound contributed to his death, the only reasonable conclusion is that the gunshot wound he received was not a substantial factor in causing Bassett's death. We will continue the review of criminal liability assuming for purposes of analysis of criminal liability on the part of Officer Barajas that the gunshot wound was a substantial factor in causing Bassett's death.

The next issue is whether or not Officer Barajas was legally justified in using potentially deadly force under the circumstances presented in this case. The evidence gathered indicates Officer Barajas responded to a call of an attempted suicide by knife. When Officer Barajas arrived, he saw Bassett standing on the sidewalk holding a knife and bleeding from both arms. Bassett complied with Officer Barajas' request to drop the knife. However, within moments of doing so, Bassett reached into his front waistband area and pulled out what appeared to be a .45 caliber semi-automatic handgun. He raised the handgun toward Officer Barajas, at which time Officer Barajas drew his service weapon and began firing at Bassett because he believe he was about to be fatally shot by Bassett. Witnesses confirmed that Bassett pulled what appeared to be a handgun from his waist area and pointed it at Officer Barajas prior to Officer Barajas firing his handgun at Bassett. Based on the evidence gathered, Officer Barajas had a reasonable belief that Bassett posed a significant threat of death or great bodily injury to him at the time Officer Barajas fired at Bassett. As such, even if Officer Barajas was the cause of Bassett's death, Officer Barajas' actions were justified under the circumstances.

CONCLUSION

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 Barajas, and there is significant evidence that the officer's actions were reasonable and justified under the circumstances when he shot Bassett on Aug. 20, 2011.

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



GARY LOGALBO
DEPUTY DISTRICT ATTORNEY



Read and Approved by **JAMES H. LAIRD**
Assistant District Attorney, TARGET UNIT