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December 14, 2012

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

Re: Officer Involved Shooting on September 9, 2011
Incident involving Edward Royle
District Attorney Investigations Case # S.A. 11-018
Garden Grove Police Department DR # 11-12293
Orange County Crime Laboratory Case # 11-52380
Orange County Coroner Case # 11-03372-RA

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) Officers Chris Earle, Steve Tran, Nick Lazenby and Paul Ashby. Edward Royle, 76, Garden Grove, died as a result of a self-inflicted gunshot wound. The incident occurred in the City of Garden Grove on Sept. 9, 2011.

OVERVIEW

This letter contains a description of the scope of and legal conclusions resulting from the OCDA's investigation of the Sept. 9, 2011, officer-involved shooting of Royle. This 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 the 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 Sept. 9, 2011, Investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. Investigators interviewed more than 25 witnesses and obtained and reviewed the following: GGPD reports, audio recordings and dispatch and radio traffic recordings; Orange County Fire Authority (OCFA) reports; Orange County Crime Lab (OCCL) reports including autopsy, toxicology, officer processing and firearms examination reports; crime scene investigation photographs; criminal history records related to Royle; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass. The OCDASAU was called to the scene because both bullets and bean bag shots were fired at Mr. Royle. The cause of death was determined after all the evidence was collected and analyzed.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all available evidence and legal standards. The scope of this review and findings are expressly limited to

a determination of whether or not any criminal conduct occurred on the part of GGPD officers, specifically Officers Earle, Tran, Lazenby and Ashby. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

METHODOLOGY OF INVESTIGATION

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 the 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, 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.

Officers Earle, Tran, Lazenby and Ashby each gave voluntary, consensual statements to the OCDA on Sept. 9, 2011.

FACTS

Royle, 76, lived in Garden Grove with his wife of 55 years, Barbara Royle.

On June 1, 2011, Royle suffered a heart attack on the way home from a fishing trip in Canada. He was admitted to the University of Minnesota Medical Center for nine days and four stents were implanted into his heart. Royle was deemed too old for a heart transplant.

On June 10, 2011, Royle returned home. On June 13, 2011, he was admitted to Huntington Beach Hospital for continuing heart problems and later transferred to Fountain Valley Regional Hospital for an additional nine days.

According to Mrs. Royle, Royle had been undergoing cardiac rehabilitation at Hoag Hospital and was depressed. Royle's doctor recommended that Royle go to Huntington Beach Hospital to be seen by their psychiatric staff, but Royle refused to go.

Prior to the heart attack, Royle suffered from high blood pressure and diabetes for 30 years. He had prostate surgery at 58 years old, which resulted in continuing health problems.

On Sept. 7, 2011, the Social Services Agency called Barbara Royle and asked if Royle had a gun. When asked by Barbara Royle, Royle retrieved his handgun and unloaded it. Barbara Royle then hid it in the washing machine. Royle denied having a second handgun, but Barbara Royle later discovered he kept a second handgun in his car in the garage.

On the evening of Sept. 8, 2011, Royle showed his wife money that he had hidden because he wanted her to know its whereabouts. The Royles slept separately that night. Royle took a prescribed sleeping pill and went to bed at 10:00 p.m.

On the morning of Sept. 9, 2011, Royle woke his wife to show her insurance papers. He was holding a handgun in his hand. Royle told Barbara Royle that he could not "take it" any longer and told her that he would prefer to have the gun she hid because it would do "a better job." Barbara Royle refused to get the gun for him.

Barbara Royle called 911 and told dispatch that her 76-year-old husband was depressed over a recent heart attack and was contemplating suicide. Royle was standing next to Barbara Royle holding a loaded handgun at the time.

At 7:37 a.m., GGPd dispatched two police officers to the Royle residence. Ten additional officers advised they would respond to the residence. Barbara Royle stayed on the phone with the dispatcher. She told the dispatcher the gun in Royle's hand was loaded and that she had hidden a second gun.

Barbara Royle gave dispatch a description of Royle. She informed them that Royle stated he wanted the hidden gun because it would do "a better job," showed her financial documents earlier that morning, and refused to put down the gun. Barbara Royle was told that police were on their way. During the phone call, Barbara Royle asked Royle to stay inside the house with her and not to hurt himself.

At 7:44 a.m., Royle walked into the backyard with a Ruger, New Model, Single-Six revolver in his hand. The revolver was loaded with six .22 Winchester Magnum caliber rounds. Barbara Royle informed dispatch of Royle's location and said Royle had been talking about suicide for the last couple of days. This information was communicated to the officers.

At 7:45 a.m., Officers Tran, Ashby, Earle, Lazenby, and John Gatine responded to Lenore Avenue, one street south and directly behind the Royle's residence. Officer Tran armed himself with his department-issued Glock, model 22, .40 caliber semi-automatic handgun, and Officer Ashby armed himself with a Remington 870 Wingmaster pump, less-lethal shotgun, loaded with bean bag rounds, rather than bullets. Officer Earle armed himself with his department-issued Glock, model 21, .45 caliber semi-automatic handgun, and Officer Lazenby armed himself with a Remington 870 Wingmaster pump, less-lethal shotgun, loaded with bean bag rounds.

The officers positioned themselves in the rear yard of a home directly behind the Royle's residence. Officer Gatine stayed in the adjacent backyard.

Officer Ashby positioned a bench against the 6 ½ foot block wall in the northwest section between their position and Royle's home. Officer Ashby stood up on the bench with his bean bag shotgun deployed as Officer Earle stood on the same bench to the right, with his duty weapon deployed. Officers Tran and Lazenby positioned themselves in the northeast portion of the same backyard. Officer Tran was armed with his duty weapon and Officer Lazenby was armed with his bean bag shotgun. Officers Tracy Holz, Raul Murillo, Daniel Camara, and Sergeants Doug Pluard and Mike Martin arrived at the scene and initially positioned themselves near the northeast corner of Royle's residence.

Officer Ryan Lux arrived at the scene and positioned himself behind a block wall at the east side of Royle's residence. Officer Lux could see Royle pacing back and forth in the backyard patio area of his home while holding a "silver" revolver in his right hand.

Barbara Royle remained on the phone with 911. From inside the home, she was able to see Royle sitting on a chair in the backyard facing the rear fence. At 7:48 a.m., she started to cry and told the dispatcher that Royle was pointing the gun at his temple. At 7:49 a.m., Royle took the gun away from his temple. At 7:50 a.m., Mrs. Royle relayed to dispatch that Royle stood up and walked around the backyard with the gun in his hand.

At 7:51 a.m., Officer Murillo saw Royle walking around the backyard. Although Officer Murillo could not see if anything was in Royle's hands, he ordered Royle several times to drop the weapon and put his hands in the air. Royle refused and walked

away from Officer Murillo with the gun still in his hand.

At 7:54 a.m., Barbara Royle told the dispatcher that she could hear someone in the backyard talking to Royle. At 7:55 a.m., Barbara Royle opened her front door to admit Officer Holz and Sergeant Pluard. Officer Holz immediately escorted Barbara Royle from the residence to a police vehicle for safety. Sergeant Pluard asked one of the officers staged in the rear yards to make contact with Royle.

Officer Gatine took a position in the northeast corner of the rear yard behind Royle's home and stood on a chair so he could observe Royle, who was armed with a chrome revolver. Royle was standing in the east end of his backyard when Officer Gatine called Royle's name to get his attention. Officer Gatine exposed his head over the wall and asked Royle what was the matter and what made him so upset. Royle answered that he had health problems. Royle did not give detail about his medical issues.

Royle began to notice the presence and movements of additional officers. Officer Gatine told him that serious situations require numerous officers to respond, but they were there to help him. When Officer Gatine asked Royle if there was anything they could do to help him, Royle responded, "No."

Royle raised the handgun to his temple, then lowered it a few seconds later and resumed pacing. According to Officer Lux, at one point, Royle made a statement to the officers similar to, "Either you guys are going to do this or I'm going to."

Royle continued to pace during the conversation with Officer Gatine. When Royle would walk toward the east end of the residence, officers staged there would tell Royle to drop his gun. Royle would briefly interact with those officers but refused to drop his weapon. Officer Gatine would call Royle back to try to keep their conversation going.

Royle seemed to pay closer attention and focus on the officers positioned on the south and west ends of his residence. While standing near the house, Royle raised his pistol slightly in a low ready position, then lowered it. Minutes later, Royle raised his handgun again, extending his right arm to "eye level" in a shooting position in a southwesterly direction, where the officers were positioned in the rear yard of the neighboring home.

Officer Gatine believed Royle was trying to "track" the officers and was afraid he was going to fire at the officers positioned in the rear yard. Officer Gatine heard, "Put it down!" followed by two to four gunshots. Officer Gatine also heard someone yell, "Less-lethal," followed closely by five to seven more rounds being fired.

Officer Lazenby believed Royle was preparing to shoot in the direction of Officer Lux. Officer Lazenby shot five less-lethal bean bag rounds while shouting, "Less-lethal, less-lethal." Officer Lazenby heard additional gunshots but did not know who was shooting. Royle did not react or appear to be impacted by gunshots. Officer Lazenby then loaded the less-lethal bean bag shotgun with his last shell.

Officer Tran observed Royle's movements and thought Royle was going to shoot him and the other officers in the immediate area. Officer Tran then shot six rounds at Royle using his Glock, model 22, .40 caliber semi-automatic handgun.

Officer Earle observed Royle's actions and believed Royle was going to shoot him and the other officers in the immediate area. Officer Earle shot three rounds at Royle using his Glock, model 21, .45 caliber semi-automatic handgun.

Officer Ashby observed Royle's movements and thought Royle was going to fire at him and the other officers positioned in the rear yard of the neighboring home. Officer Ashby heard three to four gunshots, including gunshots from Officer Earle's handgun. Royle looked around, appearing startled. Royle started to raise his handgun toward the right side of his head. Officer Ashby was afraid Royle was going to commit suicide and fired one round from his less-lethal bean bag shotgun toward Royle's chest. Royle appeared to be affected by the bean bag round hitting him but kept the gun in his right hand.

Royle used his left hand to direct the barrel of the gun to his right temple and shot himself. Royle then fell to the ground.

Officer Lux observed Royle's actions, then heard several gunshots and Officer Lazenby yelling, "Less-lethal, less-lethal." Officer Lux saw a "bean bag" round strike Royle in the stomach, which caused Royle to lower the gun, back up, and hunch over. It then became quiet as Royle reached over with his left hand to cock the hammer, raise the gun to his right temple area, and pulled the trigger. As Royle was raising the gun to his head, Officer Lux heard officers yelling, "No, no, no, drop it."

None of Officer Tran's or Officer Earle's bullets hit Royle.

After the shooting, Officers Tran, Ashby, Lazenby, and Earle jumped over the wall into Royle's backyard. Officer Ashby ran up to Royle, who was lying on his patio, arms out, supine and motionless. Royle sustained a gunshot wound to his right temple. Royle's handgun was lying near his left thigh. Officer Ashby kicked the gun away from Royle.

The officers entered the backyard and secured the scene. Orange County Fire Authority (OCFA) arrived on scene at 8:04 a.m. to conduct a patient assessment. OCFA Captain Eric Hayek observed Royle with an obvious gunshot wound to the head near the temple area. Brain matter was exposed and Royle was lying in a pool of blood. Royle did not have blood pressure or a pulse.

At 8:05 a.m., Captain Hayek pronounced Royle deceased.

Voluntary, Consensual Statement of Officer Earle

Officer Earle gave a voluntary, consensual statement to the OCDA on Sept. 9, 2011. Officer Earle observed Royle's actions and believed Royle was going to shoot him and the other officers in the immediate area. Officer Earle shot three rounds at Royle using his Glock, model 21, .45 caliber semi-automatic handgun. None of the shots he fired made contact with Royle.

Voluntary, Consensual Statement of Officer Tran

Officer Tran gave a voluntary, consensual statement to the OCDA on Sept. 9, 2011. Officer Tran observed Royle's movements and thought Royle was going to shoot him and the other officers in the immediate area. Officer Tran then shot six rounds at Royle using his Glock, model 22, .40 caliber semi-automatic handgun. None of the shots he fired made contact with Royle.

Voluntary, Consensual Statement of Officer Lazenby

Officer Lazenby gave a voluntary, consensual statement to the OCDA on Sept. 9, 2011. Officer Lazenby believed Royle was preparing to shoot in the direction of Officer Lux. Officer Lazenby shot five less-lethal, bean bag rounds while shouting, "Less-lethal, less-lethal." Officer Lazenby heard additional gunshots but did not know who was shooting. Royle did not react or appear to be impacted by the gunshots. Officer Lazenby then loaded the less-lethal bean bag shotgun with his last shell.

Voluntary, Consensual Statement of Officer Ashby

Officer Ashby gave a voluntary, consensual statement to the OCDA on Sept. 9, 2011. Officer Ashby observed Royle's movements and thought Royle was going to fire at him and the other officers positioned in the rear yard of the neighboring home. Officer Ashby heard three to four gunshots, including gunshots from Officer Earle's handgun. Royle looked around, appearing startled. Royle started to raise his handgun toward the right side of his head. Officer Ashby was afraid Royle was going to commit suicide and fired one round from his less-lethal bean bag shotgun toward Royle's chest. Royle appeared to be affected by the less-lethal bean bag round hitting him, but kept the gun in his right hand. Royle used his left hand to direct the barrel of the gun to his right temple and shot himself. Royle then fell to the ground.

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood

OCDASAU interviewed 15 neighbors. Of those who heard or saw the incident, all civilian witnesses were consistent with

each others' descriptions of the event. Royle's neighbors heard the police officers talking with Royle for five to ten minutes, asking him to put the gun down. The neighbors heard officers say, "Put the gun down," "Drop the weapon, sir, drop the weapon," "Lower the gun," and "It would make us feel better if you would put the gun down." The neighbors then heard several gunshots. OCDASAU interviewed the witness who resided in the home adjacent to the Royle's, where officers were positioned in the backyard. He stated that the officers did everything they could to de-escalate the situation.

EVIDENCE COLLECTED AT THE SCENE

OCCL personnel located, identified, photographed, and collected the following items of evidence:

From Scene 1

1. Ruger six-shot revolver, serial #63-58322
2. Pair of eyeglasses
3. Six (6) less-lethal projectiles
4. Four (4) apparent impact damaged bullet cores
5. Less-lethal shotgun, GGPD inventory control tag #134
6. Four (4) apparent impact damaged copper jackets
7. Walther model P-38 pistol, serial #9928
8. Magazine containing five copper jacketed cartridges, head stamp "9mm Lugar"
9. Ziploc bags containing approximately thirty (30) 9 mm jacketed cartridges

From Scene 2

10. Less-lethal shotgun, GGPD inventory control tag #104
11. Five (5) .40 caliber casings, head stamp "40 S & W Winchester"
12. Six (6) less-lethal shot shell casings, head stamp "Super sock 2581"
13. Three (3) .45 caliber casing, head stamp "Win 45 auto +P"

From Officer Tran

14. Glock, model .22, .40 caliber, semi-automatic handgun, serial # BGH421
15. Ten (10) .40 caliber cartridges
16. Two handgun magazines
17. S & W 5 shot .38 caliber revolver, model 642, serial # DCW8922
18. Five (5) .38 rounds

From Officer Earle

19. Glock, model 21, .45 caliber, semi-automatic handgun, serial # LCP872
20. Fourteen (14) .45 caliber cartridges
21. Two handgun magazines

EVIDENCE ANALYSIS

Toxicology

Royle's post-mortem blood samples were analyzed for blood alcohol and common drugs of abuse; none were detected.

Weapons/Firearm Examinations

The firearms examinations were conducted by OCCL Forensic Science Services Scientist Thomas Matsudaira, who examined the following items of evidence:

1. Glock Model 22, .40 caliber handgun, magazines and cartridges (Officer Tran)
2. Glock model 21, .45 caliber handgun, magazines and cartridges (Officer Earle)
3. Remington, 870 Wingmaster Pump Shotgun, 12 Gauge and shotshells (Officer Ashby)
4. Remington, 870 Wingmaster Pump Shotgun, 12 Gauge and shotshells (Officer Lazenby)

5. Ruger, New Model Single-Six Revolver, .22 Winchester Magnum Caliber and cartridges (Royle)
6. Projectiles and fragments from the scene
7. Projectile from the autopsy

After examining the evidence, Matsudaira concluded that the Glock pistols and Remington shotguns functioned normally. Royle's Ruger was test fired using ammunition from the laboratory's reference collection, and no abnormalities were noted.

Glock Model 22 handgun (Officer Tran)

Five cartridge cases from the scene were determined to have been fired from Officer Tran's Glock Model 22 pistol.

Glock Model 21 handgun (Officer Earle)

Three cartridge cases from the scene were determined to have been fired from Officer Earle's Glock, Model 21 pistol.

Remington 870 Wingmaster Pump Shotgun (Officer Ashby)

One shotshell from the scene was determined to have been fired from Officer Ashby's less-lethal Remington bean bag shotgun.

Remington 870 Wingmaster Pump Shotgun (Officer Lazenby)

Four shotshells from the scene were determined to have been fired from Officer Lazenby's less-lethal Remington bean bag shotgun. A fifth bean bag shotshell was determined to have been cycled in Officer Lazenby's shotgun, but could not be determined if it was fired from Lazenby's shotgun.

Projectile from the Autopsy

The bullet jacket from the autopsy was determined to have been fired from Royle's Ruger revolver.

Royle's Medical Condition

On Sept. 12, 2011, a post-mortem examination of Royle was conducted by Orange County Coroner Forensic Pathologist Lawrence Nguyen at the Orange County Sheriff-Coroner Forensic Science Center in Santa Ana. Following the autopsy, Dr. Nguyen concluded Royle's cause of death to be a self-inflicted gunshot wound to the head.

Royle's Prior Criminal History

Royle had no criminal history.

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 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 [public offense] 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.

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 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 Officers Tran, Ashby, Earle, and Lazenby with Royle.

LEGAL ANALYSIS

Officers were dispatched to the scene where they were informed by police dispatch that 76-year-old Royle was armed with a loaded revolver and contemplating suicide. All of the facts are consistent and pieced together by Royle’s wife, civilian

witnesses, voluntary police officers' statements, and forensic evidence. Royle had suffered two recent heart attacks, was depressed, and informed his wife he could not "take it" any longer. When officers arrived, Royle repeatedly refused requests to put down his weapon and told officers something like, "Either you guys are going to do this or I'm going to."

Numerous officers noted Royle's focus on the officers and were afraid Royle was going to fire at the officers positioned near his backyard. In addition to pointing his gun at his own head, Royle raised his handgun, extending his right arm to eye level in a shooting position, in the direction of officers in the rear yard of the adjacent home. Fearing for their safety and that of their fellow officers, Officers Tran and Earle fired their Glock handguns, and Officers Ashby and Lazenby fired their Remington less-lethal bean bag shotguns. Royle's actions, objectively and reasonably, posed a danger of death and serious bodily injury to the officers and other civilians. The officers' belief that it was necessary to employ deadly force to stop the threat is reasonable under the circumstances.

Furthermore, no bullets hit Royle. Royle raised his gun to his right temple and shot himself. The cause of death was determined to be caused by Royle's self-inflicted gunshot wound to the head, and not by any action taken by a GGPD officer.

In order for Officers Earle, Tran, Ashby, and Lazenby to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that Officers Earle, Tran, Ashby, and Lazenby did not act in reasonable and justifiable self-defense or defense of others when they shot at Royle. As should be apparent from the above-described legal analysis and legal conclusion, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Officers Earle, Tran, Ashby, and Lazenby to use the force they did in this circumstance. There is significant evidence that Officers Earle, Tran, Ashby, and Lazenby acted reasonably under the circumstances.

CONCLUSION

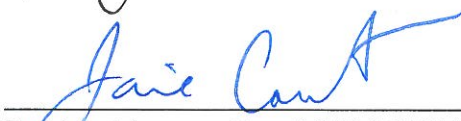
Based upon a review of all the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of any criminal culpability on the part of Officers Earle, Tran, Ashby, and Lazenby. There is substantial evidence that the officers' actions were reasonable and justified under the circumstances on Sept. 9, 2011.

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

Sincerely,



Erin Rowe
Deputy District Attorney
Special Prosecutions Unit



Read and Approved by JAIME COULTER
Assistant District Attorney, Special Prosecutions Unit