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December 12, 2012

Chief John Welter
Anaheim Police Department
425 S. Harbor Blvd.
Anaheim, CA 92805

Re: Officer Involved Shooting on January 19, 2012
Fatal Incident involving Roscoe Cambridge
District Attorney Investigations Case # S.A. 12-003
Anaheim Police Department DR # 12-9120
Orange County Crime Laboratory Case # 12-41134
Orange County Sheriff Coroner Case # 12-00326-RE

Dear Chief Welter,

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 Anaheim Police Department Sergeant Michael Bustamante. Roscoe Cambridge, 29, Anaheim Hills, died as a result of his injuries. The incident occurred in the City of Anaheim on Jan. 19, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Jan. 19, 2012, fatal officer-involved shooting of Cambridge. 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 APD 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 Jan. 19, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 30 witnesses and obtained and reviewed the following: APD reports, audio recordings and dispatch and radio traffic recordings; Orange County Sheriff 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 Cambridge; criminal history records related to Cambridge including prior criminal history records and prior incident reports; the personnel records of Sergeant Bustamante; 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 APD officers or personnel, specifically Sergeant Bustamante. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important aspect of investigating these types of cases is attempting to interview the officer involved in the shooting. Sergeant Bustamante provided a voluntary statement to OCDA Investigators on Jan. 24, 2012.

FACTS

Synopsis

On Thursday, Jan. 19, 2012, at approximately 1:15 p.m., Cambridge approached APD Sergeant Bustamante while Bustamante was seated in his patrol car in the parking lot of the APD East Substation. Cambridge pulled a knife and lunged through Sergeant Bustamante's open window, attempting to stab him. Sergeant Bustamante, who saw Cambridge coming, drew his weapon and shot Cambridge, killing him.

Description of the Scene of the Incident

The shooting occurred in the visitor parking area of the APD East Substation, located at 8201 East Santa Ana Canyon Road, on the northwest corner of Santa Ana Canyon Road and Roosevelt Road.

8201 East Santa Ana Canyon Road is a large community building containing a city library on the first level of the building. The second level of the building is the APD East Substation. Directly east of this location is a large shopping center containing several fast food restaurants, an auto store, and a gas station. The building west of the location is the Anaheim City Recreational Building.

The parking lot where the shooting incident occurred is comprised of three rows of parking stalls for the public, all running parallel to Santa Ana Canyon Road. The three rows of parking are separated by a raised planter. Each planter is framed by a raised six-inch concrete curb.

On the day of the incident, Sergeant Bustamante had pulled into the parking lot and stopped his vehicle next to the first

row of parking stalls, which ran parallel to Santa Ana Canyon Road, facing north. His vehicle was not in a parked stall, but rather, in an aisle to the right of the planter. Subsequent investigation of the shooting revealed that the vehicle was left in the same condition as it was at the time of the shooting incident. The keys were in the ignition and the vehicle was running.

Cambridge's body was located within a decorative planter at the end of the row, next to Sergeant Bustamante's patrol vehicle. Cambridge was lying on his left side in a semi-fetal position with his legs slightly extended towards a northern direction and his head in a southern direction. Cambridge's arms were bent close to his body and a large kitchen knife was lying next to his right ankle, a couple of inches away. Crime scene investigation photographic analysis reveals that the knife was located about six feet from the left rear corner of the patrol vehicle.

Eyewitnesses

While there were no eyewitnesses to the initial encounter between Cambridge and Sergeant Bustamante, nor to the resultant shooting itself, several individuals were located who saw portions of the events just prior to and just after these occurrences.

Witness #1, an Anaheim City Public Works employee, was in a truck when he observed Cambridge walking northbound in the west crosswalk. After waiting for him to cross, Witness #1 and his colleague turned westbound and parked in the number one lane next to the center divider in order to perform repair work. As Witness #1 opened his passenger door, he heard three apparent gun shots and a pinging noise. He immediately looked northbound and observed Cambridge standing close to the driver's side of a police car that was parked in the parking lot, facing north next to a planter. It appeared to Witness #1 that the police officer who was sitting in the driver's seat had fired while seated. Witness #1 observed Cambridge take two steps back and fall down in the planter.

Witness #2, the colleague of Witness #1, heard three gunshots fired in succession after parking the truck. He exited the truck and looked in a northerly direction. He saw a uniformed police officer standing in a planter in the parking lot. The police officer was approximately three feet away from the open driver's door of a marked police vehicle, with a semi-automatic pistol in his right hand. He reported that the police officer was standing near Cambridge, who was lying in the planter.

Witness #3, another Anaheim City Public Works employee, was out of his truck setting up cones. He heard a gunshot coming from the area of APD's East Substation parking lot. He reported hearing one gunshot, then less than one second later two to three more gunshots. He did not see the officer firing the weapon. He ran a distance of approximately 20 to 30 yards toward where he heard the shots and saw an officer wearing a full patrol uniform standing over Cambridge. He noticed a knife resembling a large steak knife (six to eight-inch blade) on the ground next to Cambridge.

Witness #4, another Anaheim City Public Works employee, was in a truck, stopped on northbound Roosevelt Street, when he observed Cambridge walk northbound in the west crosswalk, across Santa Ana Canyon Road. He described Cambridge, who had both hands in his pockets, as "focused," not looking left or right before stepping into the street to cross. After Cambridge cleared the intersection, Witness #4 turned left and parked his truck in the number one lane. He then exited and walked back to the tailgate, where he heard three gunshots fired in succession, along with a ringing type noise. He looked north to his right and observed a police officer armed with a semi-automatic pistol in his right hand, standing approximately four feet north of Cambridge, who was lying in a fetal position on his left side in a planter west of the parked police car. Witness #4 reported that the shooting incident occurred within 30 seconds of Cambridge crossing the street.

Witness #5, a citizen motorist, had been stopped facing a red light in the left turn lane of southbound Roosevelt Street at Santa Ana Canyon Road when he heard three apparent gun shots. He turned to look through his passenger door window and saw a police officer holding a handgun in his outstretched right hand, pointing the gun at an apparent male

down on his knees. The officer was holding a hand-held radio microphone that he appeared to be talking into in his left hand. Cambridge slowly fell on his left side to the ground.

Statements of Sergeant Bustamante

Immediately after the shooting, Sergeant Bustamante made a broadcast over his police radio that there was an emergency situation due to a suspect pulling a knife on him, that the suspect was down, and that paramedics were needed.

APD Sergeant James Cossin responded to the scene shortly after the emergency radio call. Sergeant Cossin stood by Sergeant Bustamante, who spontaneously said, "It happened fast" and, "It is scary to have someone come up on you with a knife."

On Jan. 24, 2012, Sergeant Bustamante gave a voluntary, consensual statement to the OCDA.

According to Sergeant Bustamante, on the day of the shooting, at approximately 1:10 p.m., he entered the APD East Substation parking lot in his patrol vehicle and was getting ready to go off-duty for the day. Upon pulling into the parking lot, he stopped his vehicle in the east end of the lot, facing north, among a row of cars closest to Santa Ana Canyon Road. The parking lot is surrounded by the police station, public library, community center, and several local businesses.

Sergeant Bustamante had the following weapons in his patrol unit: a baton strapped to his backpack, which was on the right front passenger seat, a Taser inside the pouch of the backpack, a less-than-lethal Bean Bag shotgun secured in the trunk of the vehicle, and a Wilson Combat .45 caliber semi-automatic handgun in his holster.

While still sitting in his car, at approximately 1:15 p.m., Sergeant Bustamante happened to glance in his rearview mirror. He saw Cambridge about seven feet from the trunk of his patrol unit, walking in a diagonal pattern toward the patrol unit with a sense of urgency. Upon first glance, Sergeant Bustamante noticed Cambridge carrying a Bible in his hands and immediately thought "religionism," having dealt with many hyper-religious mentally ill people in the past. Sergeant Bustamante then noticed a "glimmer of light" reflecting off what Sergeant Bustamante quickly realized was a long serrated knife blade.

Sergeant Bustamante and Cambridge made eye contact, at which point Sergeant Bustamante realized that Cambridge was trying to "sneak up" on him. Even behind dark sunglasses, Sergeant Bustamante knew judging by Cambridge's facial reaction that Cambridge knew he had been discovered. With the patrol vehicle window down all the way, Sergeant Bustamante realized he was "in trouble" and thought, "He's got me if he wants me – and he's doing it," referring to Cambridge attempting to stab him. He knew that Cambridge was quickly approaching the driver's side of his vehicle with the knife, so he unsnapped his holster and removed his gun with his right hand. Sergeant Bustamante said that Cambridge then lunged with the knife in his left hand through Sergeant Bustamante's car window in an attempt to stab him. Sergeant Bustamante said he leaned away from the knife and pivoted to point his gun at Cambridge, then shot four rounds with his pistol in order to defend himself.

Evidence Collected

Evidence collected at the scene consisted of four expended .45 automatic cartridge casings, Winchester brand. A Winchester .45 auto cartridge casing was located lying on top of the raised concrete planter approximately two feet west of Sergeant Bustamante's patrol vehicle near the driver's door. A second Winchester .45 auto cartridge casing was located on the asphalt pavement between two raised concrete planters and approximately eight feet north of Sergeant Bustamante's vehicle. A third Winchester .45 casing was also located on the asphalt pavement between the same decorative planters and was approximately 25 feet north of the vehicle. A fourth Winchester .45 cartridge casing was located on the front passenger floor board of Sergeant Bustamante's patrol vehicle.

Officers also found Cambridge's four-inch by six-inch red-cover Bible and a Cutco kitchen knife with a seven-inch serrated blade and a five and a half-inch handle. The knife was located laying in the decorative planter a couple of inches away from Cambridge's right ankle. Directly east of the body between the left rear tire of Sergeant Bustamante's patrol vehicle and the six-inch raised concrete planter was the Bible on the asphalt pavement. The Bible had an apparent bullet hole in the back cover and the edges protruded toward the interior of the book.

Further investigation also revealed that Sergeant Bustamante's Ford Crown Victoria patrol vehicle sustained damage on the exterior of the driver's side window frame, revealing an apparent exit bullet hole with a corresponding entry bullet hole on the interior of the driver's side window frame. There was also a vertical strike mark or "groove" in the black rubber seal of the patrol vehicle, consistent with the driver's door being in the closed position during the shooting.

Autopsy

On Jan. 20, 2012, Dr. Young-Son Kim, Forensic Pathologist for the Orange County Coroner, performed the autopsy on Cambridge.

The autopsy discovered the following on Cambridge's body:

- One gunshot entry to the left middle ribcage, with an exit on the right anterior middle ribcage, and a direction of left-to-right, downward, and slightly back to front. This fatal wound lacerated a lung and entered the heart.
- One gunshot entry to the inner surface of the left upper arm, with an exit on the posterior surface of the left upper arm and a direction of front to back and slightly upwards.
- One gunshot entry to the lower left arm with an exit on the inner lateral surface of the left lower arm and a direction of travel of back-to-front and slightly upwards.
- One gunshot entry left of the midline of the left back with an exit on the left back and a direction of travel of left-to-right, horizontal and straight.

Dr. Kim concluded that the gunshot wound to the left upper torso was fatal. Dr. Kim also noticed that the bullet that entered the left lower torso had hit an intermediary target prior to entering the body, possibly being the shot that also caused the damage to the patrol vehicle door.

Analysis of the trajectories, as determined by the autopsy, reveals nothing inconsistent with Sergeant Bustamante's statement that he fired at Cambridge from the driver's seat of his sedan as he was leaning into the driver's compartment with his outstretched hand.

EVIDENCE ANALYSIS

Firearm examination

Sergeant Bustamante's Wilson Combat, semi-automatic .45 caliber handgun was received and unloaded with its magazine removed. The gun was test-fired using ammunition from the laboratory reference collection. Test firing the gun at multiple target distances, the weapon appeared to be functioning properly, although it did experience a jam feeding cartridges from the magazine during test firing, which was immediately able to be cleared.

During the test firing, gunpowder pattern targets were generated at muzzle to target distances of six, 12, 24, 36, 48, 60, and 72 inches. Soot was observed on the cotton twill exemplars at target distances of six and 12 inches. Embedded gunpowder particles were found in the cotton twill at target distances of six, 12, and 24 inches. Loosely adhering gunpowder particles were found on the targets at distances of 36 and 48 inches. No gunpowder was found on the targets at distances of 60 or 72 inches.

The four cartridge casings found at the scene were microscopically compared to test-fired cartridge cases from Sergeant Bustamante's Wilson Combat handgun and determined to be a match.

Cambridge's Clothing

Cambridge's clothing was examined by an Orange County Sheriff's Department Forensic Scientist using an illuminated magnifier and stereomicroscope. Apparent bullet holes were in the front and back of the jacket. A copper jacket was removed from the left sleeve of the t-shirt. It was determined by microscopic comparison to test fired bullets to have been fired from Sergeant Bustamante's Wilson Combat pistol. Apparent gunpowder particles were observed on the front and back of the jacket. These particles were visually consistent with partially burned smokeless powder. Four of the particles were tested and identified as smokeless gunpowder kernels. Based on the Firearm examination described above, the presence of these gunpowder particles is consistent with firing distances of six to 48 inches. This is consistent with the statement of Sergeant Bustamante.

Knife from the Scene

The knife handle was swabbed for DNA sampling and the typing was performed using the Identifiler Plus System. The DNA profile obtained from the knife handle is consistent with the DNA profile obtained from the blood standard from Cambridge. The frequency of choosing an individual at random who could be a possible source of the DNA from the knife handle is rarer than one in one trillion unrelated individuals.

Surveillance Videos

Businesses in the immediate area of the incident were canvassed to determine if any had video surveillance that captured the shooting. No video cameras were found that covered the area where the shooting occurred.

Toxicology

A toxicological examination of Cambridge's postmortem blood revealed the presence of Tetrahydrocannabinol Carboxy-Acid (THCA), a metabolite of the active ingredient in marijuana. The positive finding for THCA by itself does not lend itself to a more specific interpretation than this: at some time prior to this incident, Cambridge ingested marijuana.

Background Information on Cambridge

Cambridge's criminal history was reviewed and considered.

Cambridge's family revealed that Cambridge had been living in his car for about seven months. He then moved in with his mother just before Christmas 2011. He was briefly arrested on a probation violation and released before New Year's Eve 2012, at which time Cambridge went back to live with his mother.

According to his family, Cambridge was diagnosed with schizophrenia and had been seen by a doctor, but typically refused to take his prescribed medication, preferring to "self-medicate" with marijuana and methamphetamine. His family described Cambridge as "spaced out" and frequently carrying a Bible while talking about the world coming to an end.

A couple of weeks before the shooting incident, Cambridge had said, "If a policeman ever comes after me again, I'm going to do something, there will be blood." However, his family stated that Cambridge never showed any violent tendencies.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officer involved in the shooting include murder (PC 187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict any officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications apply for the officers' actions. People v. Banks (1977) 67 Cal.App.3d 379, 383-84. The primary justification which might apply in this case is provided by Penal Code section 197.

California Penal Code section 197 provides that use of deadly force by any person is justifiable when used in self-

defense or in defense of others. Section 197 must be analyzed in light of U.S. Supreme Court precedent limits the right of a police officer to use deadly force. *People v. Martin* (1985) 168 Cal.App.3d 1111, 1124. The U.S. Supreme Court ruled that a police officer is entitled to use deadly force only when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others.” *Tennessee v. Garner* (1985) 471 U.S. 1, 3.

However, any determination about the reasonableness of force used by an officer “must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving.” Thus, “[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.” *Graham v. Connor* (1989) 490 U.S. 386, 396.

LEGAL ANALYSIS

The issue of whether there is criminal culpability on the part of Sergeant Bustamante depends on whether his actions were justifiable as self-defense.

Self-defense is a legal justification for a killing when the officer 1) reasonably believed that he was in imminent danger of being killed or suffering great bodily injury 2) reasonably believed that the immediate use of deadly force was necessary to defend against that danger and 3) used no more force than was reasonably necessary to defend against that danger. *People v. Lopez*, (2011) 199 Cal.App.4th 1297; *People v. Randle*, (2005) 35 Cal.4th 987; *People v. Hardin*, (2000) 85 Cal.App.4th 625.

In his statement to OCDA, Sergeant Bustamante said that he shot Cambridge in self-defense. His claim of self-defense to OCDA is consistent with his radio broadcast immediately after the shooting and his statement to APD Sergeant Cossin at the scene of the shooting; further, Sergeant Bustamante has made no statements inconsistent with his claim of self-defense. We find that Sergeant Bustamante’s statement that he acted out of fear for his own safety credible, it is not contradicted by other evidence, and it is corroborated by physical evidence and eyewitness accounts to the events just before and after the shooting. Having established that there is proof that Sergeant Bustamante acted in the belief that he needed to shoot Cambridge in order to defend himself, what remains to be analyzed is whether his belief was reasonable, whether the danger was imminent, and whether the force used was proportional to the threat. These issues will now be discussed in turn.

In order for Sergeant Bustamante’s actions to be justifiable self-defense, his fear must be reasonable, and must be of *imminent* harm; any future harm would not suffice. *Harden*, 85 Cal.App.4th at 629. In *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187, the court defined the term “imminent” to mean that “the peril must have existed or appeared to the defendant to have existed at the very time the fatal shot was fired. In other words, the peril must appear to the defendant as immediate and present and not prospective or even in the near future.”

It is a demonstrable fact that an armed attacker within 21 feet of his intended victim can reach that person in less than two seconds. Accordingly, when faced with an individual within 21 feet armed with a knife charging at them, officers are trained that, absent other methods of defense, they must attempt to move out of the plane of attack, draw their weapon and fire.¹ Here, when Sergeant Bustamante first noticed Cambridge, Cambridge was within seven feet of his patrol vehicle (consequently, the knife was well inside of 21 feet). Sergeant Bustamante, being seated alone inside of the vehicle with the window down, was in an especially vulnerable position as he noticed the long serrated knife blade, unable to maneuver out of the plane of the attack. Based on the evidence that Cambridge was wielding a knife, was at close range, and was advancing toward Sergeant Bustamante, we conclude that Sergeant Bustamante reasonably

¹ For more than 20 years, a concept called the “21-Foot Rule” has been a core component in training officers to defend themselves against edged weapons such as knives. The “rule,” derived from extensive experimentation and study, states that in the time it takes the average officer to recognize a threat, draw his gun and fire two rounds at an approaching assailant, an average subject charging at the officer with a knife or other cutting or stabbing weapon can cover a distance of 21 feet.

believed that he was in imminent danger of being killed or suffering great bodily injury.

With respect to the issues of the need to use deadly force in response to the threat, and using no more force than necessary, the key facts to consider are the apparent imminence of Cambridge's deadly attack, Sergeant Bustamante's vulnerability, and the shortage of options available to Sergeant Bustamante. Sergeant Bustamante felt alone, vulnerable, and trapped inside the patrol vehicle. According to Sergeant Bustamante, he went into "preservation mode." Calling for help was not an effective option. It was too late to roll up his car window or drive his car away. He did not have quick access to any less-than-lethal options. Therefore, under the circumstances of the apparent imminent deadly attack by Cambridge, it was reasonable for Sergeant Bustamante to shoot at Cambridge.

Further, viewing the scene as a reasonable officer on the scene would, instead of through the calm of 20/20 hindsight – as the Supreme Court counsels we must – we find that it was not excessive for Sergeant Bustamante to fire four rounds at Cambridge. If he hit Cambridge only once, it could take at least six to seven minutes for Cambridge to bleed out, giving Cambridge more time to attack Sergeant Bustamante. Sergeant Bustamante also did not have a clear line of fire because, in twisting and turning to avoid Cambridge's attack, the door frame of the vehicle was blocking his shot. With Cambridge advancing towards him with the knife blade, through the door panel, it was not unreasonable to fire four rounds in succession to ward off the imminent danger.

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 Sergeant Bustamante, and there is significant evidence that the officer's actions were reasonable and justified under the circumstances when he shot Cambridge on Jan. 19, 2012.

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

Respectfully submitted,


Jim Mendelson
Senior Deputy District Attorney
Homicide Unit


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