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July 16, 2014

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Officer Involved Shooting on September 24, 2013
Death of Connor Bishop Zion
District Attorney Investigations Case # S.A. 13-025
Orange County Sheriff's Department Case # 13-188544
Orange County Crime Laboratory Case # F.R. 13-53542

Dear Sheriff Hutchens,

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 Orange County Sheriff's Department (OCSD) Deputy Michael Higgins. Connor Bishop Zion, 21 years old, died as a result of his injuries. The incident occurred in the City of Laguna Niguel on Sept. 24, 2013.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Sept. 24, 2013, fatal officer-involved shooting of Zion. 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 OCSD deputy 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 Sept. 24, 2013, OCDA Special Assignment Unit (OCDASAU) Investigators responded to this incident. During the course of this investigation, 23 interviews were conducted, and 43 additional witnesses were contacted during the supplemental canvas interviews. Investigators also obtained and reviewed the following: OCSD reports, patrol vehicle videos, dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including firearms examination reports; crime scene investigation photographs; coroner summary and photographs related to the injuries sustained by Zion; medical records and photographs related to injuries sustained by Deputy Juan Lopez; criminal history records related to Zion including prior criminal history records and prior incident reports; and other relevant reports and materials.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD personnel or any other person under the supervision of the OCSD. 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, 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. Deputy District Attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for legal review and 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 part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Deputy Higgins gave a voluntary statement to OCDA Investigators on Sept. 26, 2013.

FACTS

Sometime in 2012, Zion moved to California from the State of Washington to pursue a career in Latin ballroom dancing. Shortly after moving to California, Zion met and befriended John Doe 1. Zion and John Doe 1 shared a common address as early as July 21, 2012.

In the morning hours of Sept. 24, 2013, Zion's mother received a phone call from John Doe 1 informing her that Zion had been suffering from seizures for the past few days. John Doe 1 believed it would be in Zion's best interest for her to fly down so she could help Zion get medical attention. John Doe 1 told Zion's mother that Zion was "spinning and felt out of control."

At John Doe 1's request, Zion's mother traveled from her home in Washington to Orange County to tend to Zion's medical needs. She arrived at John Doe 1's residence between 6:30 p.m. and 7:00 p.m. that same day. The residence is located in a unit in a condominium complex on Chandon in Laguna Niguel. Zion was upstairs sleeping upon his mother's arrival. Zion's mother and John Doe 1 were downstairs discussing Zion's medication for seizures and discussing whether he had been taking it as prescribed. Zion's mother believed that Zion was supposed to be taking his medication twice daily; however, she was unaware if he was taking it as prescribed.

Shortly after Zion's mother arrived, Zion came downstairs. According to Zion's mother, Zion was "raging." She described Zion's eyes as being "weird," and he appeared to be in an "aura" or "hallucinating" state. Zion made delusional statements that he was upset because his mother and John Doe 1 had called the police on him and he had been shot and was dead. At no time did Zion acknowledge his mother, who had traveled from Washington to help him. Zion's mother made attempts to calm her son, to no avail. She had seen aggressive behavior from him in the past, which she attributed to his seizures, but she had not witnessed Zion being violent. Zion's mother said, "It was different this time."

According to Zion's mother, Zion went into "attack" mode and attacked John Doe 1, who was seated on the couch in the living room. Zion jumped on top of John Doe 1, hitting him repeatedly. Zion positioned himself on top of John Doe 1 and continued his attack by biting John Doe 1 on his left bicep muscle, breaking the skin. Zion's mother wrapped both arms around Zion and attempted to pull him away from John Doe 1. Zion responded by turning his head to the left and biting his mother on the left arm near the tricep muscle. John Doe 1 pushed Zion away from him to escape his attack. Zion went to the kitchen, where he retrieved a serrated knife, approximately 12 inches in length. John Doe 1 and Zion's mother followed Zion into the kitchen in an effort to try to calm him. According to Zion's mother, Zion appeared to go into a "crazy protective mode. He was in like a survival mode."

During their attempt to calm Zion and control the situation, Zion used the knife from the kitchen to assault John Doe 1. John Doe 1 suffered an approximate 2 ¼-inch laceration to his right bicep and a severe laceration to his lower right forearm, which severed various muscles and caused John Doe 1 to bleed profusely. John Doe 1 ran out of the kitchen and left the residence through the back patio to get help. Zion's mother approached Zion from behind and attempted to remove the knife from his left hand. She grabbed the blade of the knife, which Zion still had in his hand, causing an approximate 1 ¼-inch laceration to her left palm near the thumb. She was able to extract the knife from Zion's hand and disposed of it in the chimney located on the back patio. Zion's mother exited the residence through the front door and observed neighbors outside tending to John Doe 1's wounds in the common area located to the front of the residence.

Two neighbors ("John Doe 2" and "Jane Doe 1") were in their living room when they heard screaming coming from the front of their residence. They approached their front door and saw Zion's mother, who appeared to be bleeding from the hand. John Doe 2 and Jane Doe 1 invited Zion's mother into their residence. Zion's mother said, "He's crazy, he's crazy, he's trying to kill me, he has a knife, he's going crazy." She then stated, "My son's going crazy."

At 7:22 p.m., OCSD dispatch received the first phone call reporting a male subject stabbed in the street. At 7:23 p.m., Deputy Jason Chapluk and Deputy Lopez were dispatched to the location reference a "927 [man down] stabbed in the street," with the suspect's description unknown. Deputy Chapluk was dispatched as the primary handling unit and Deputy Lopez was dispatched as the backup unit. The deputies were authorized to respond "Code 3" (lights and siren). At the time OCSD dispatch advised deputies of the call, Deputy Lopez and Deputy Higgins were at the OCSD Laguna Hills City Hall building located at 30111 Crown Valley Parkway, approximately 2.1 miles away from where the call originated. Due to the circumstances of the call, Deputy Higgins also responded. Deputy Rhett Gilbert advised that he would also be responding. Orange County Fire Authority (OCFA) was also dispatched due to the nature of the call. Dispatch advised responding deputies that OCFA would be "staging" (waiting outside the immediate scene) until deputies on scene advised they could safely enter.

Deputies Lopez and Higgins both responded "Code 3." In doing so, both patrol vehicles' in-car digital video recorders were activated and recorded throughout the duration of the incident.

At 7:25 p.m., Jane Doe called OCSD 911 dispatchers to report that a suspect near her residence had stabbed a male and a female with a knife. Jane Doe 1 informed dispatch that she had the female victim, Zion's mother, in her residence and that she was bleeding from the hand. Jane Doe 1 told the dispatcher that Zion's mother stated it was her son wielding the knife and that he had almost cut another man's arm off.

Shortly before the deputies arrived, Jane Doe 2 was walking her dogs on Chandon. As she neared the complex on Chandon, she heard a male voice yelling, "I'm going to kill her, I am going to shoot her in the back of the head, I hate her." As Jane Doe 2 approached the residence on Chandon, Zion appeared from the breezeway wearing dark, baggy clothing. Zion asked Jane Doe 2, "Have you seen my mother?" Jane Doe 2 replied she had not. She then heard the sound of police sirens nearing the location, at which time Zion said, "Oh shit, the cops," and ran towards the breezeway on Chandon. Fearing for her safety, Jane Doe 2 crouched next to the bushes in the driveway just west of the breezeway until the deputies arrived.

At 7:26 p.m., Deputies Lopez and Higgins arrived on scene. Deputy Lopez entered the Chandon complex and was followed closely by Deputy Higgins. Deputy Lopez, unfamiliar with exactly where the specific residence on Chandon was located, stopped at the directory for guidance. The directory indicated the address was to the south; both deputies proceeded in that direction. As they neared the location, Deputy Lopez observed Jane Doe 2 standing in the street. Jane Doe 2 was waving her hands frantically and pointing Deputy Lopez in the direction of the breezeway. From Jane Doe 2's vantage point, she was able to see that Zion was concealing himself near a tree in the breezeway.

Deputy Lopez positioned his patrol vehicle at an angle with his headlights pointed in a southeast direction, illuminating the breezeway. Deputy Lopez's vehicle was positioned approximately 25 feet away from the entrance. The lights from the patrol vehicle illuminated the breezeway briefly before Deputy Lopez turned them off and exited his vehicle. Deputy Higgins arrived at the same time and parked his vehicle north of Deputy Lopez's vehicle, approximately 15 feet away, creating a large "V" shape with the vehicles.

As Deputy Lopez exited his vehicle, Zion immediately emerged from the now-darkened breezeway with a knife in his left hand, running directly toward Deputy Lopez. Zion screamed "I'll kill you..... you mother f*****," at Deputy Lopez as he quickly closed the distance. Deputy Lopez realized that he had been ambushed and yelled, "Oh, God," as he turned to run and create distance between him and Zion. Deputy Lopez ran behind his patrol vehicle and behind Deputy Higgins' patrol vehicle, which Deputy Higgins had just begun to exit. Deputy Lopez stated that he believed Zion had closed enough distance that he did not have enough time to draw his handgun and fire at Zion without being struck by the knife.

As Deputy Higgins prepared to exit his vehicle, he observed Zion emerge sprinting from the breezeway with a knife in his hand and screaming. Deputy Higgins did not see Deputy Lopez exit his vehicle, and was thus not immediately aware that Zion was chasing Deputy Lopez. Deputy Higgins' initial perspective was that Zion was coming at them with a knife and his only option was to re-enter his vehicle to create space. Deputy Higgins entered his vehicle and shifted into reverse to distance himself from the threat. Before Deputy Higgins could retreat too far, he observed Deputy Lopez run behind his (Deputy Higgins') vehicle, followed closely by Zion, who continued to scream.

Deputy Lopez ran around the back of Deputy Higgins' vehicle, to the passenger side, and attempted to turn on Zion and draw his handgun. As Deputy Lopez turned, he lost his footing and fell to the ground. Deputy Lopez quickly positioned himself on his back and lifted his feet into the air, using them to push Zion away as Zion attempted to stab him. Deputy Lopez also raised his arms to protect his chest and face from being stabbed. While doing so, Zion stabbed Deputy Lopez, causing a 2 ½-inch laceration to the right tricep muscle, an approximate 3-inch laceration to the inner left bicep muscle, and an approximate 1-inch laceration to the right outer forearm.

Deputy Higgins, who had retreated a few feet in his patrol vehicle, observed Deputy Lopez on the ground north of his vehicle. Deputy Higgins described seeing Zion, standing over Deputy Lopez, "raining down" his knife on top of Deputy Lopez. Deputy Higgins attempted to shift his patrol vehicle quickly into park to assist Deputy Lopez. Deputy Higgins quickly exited his vehicle (which was still in drive) and ran toward the left front of his vehicle with his handgun drawn. Deputy Higgins feared that Deputy Lopez was "mortally wounded" and fired at Zion, who continued his attempts to stab Deputy Lopez.

Deputy Higgins fired one or two rounds at Zion as he stood over Deputy Lopez. After approximately the second round being fired, Zion fled in a southeast direction toward Jane Doe 2, who was in a crouched position up against a garage door. Deputy Higgins continued to fire at Zion, who ran past him, the rounds appearing to have no effect on Zion. Deputy Higgins followed Zion, still firing, as Zion ran towards the breezeway, where he collapsed on the sidewalk at the entrance to the breezeway. Deputy Higgins followed Zion to the breezeway, firing until he had exhausted all 18 rounds contained within his handgun and magazine. Zion lay on the ground and continued to move as Deputy Higgins realized his handgun had gone to slide lock and was out of ammunition. Deputy Higgins, aware that Deputy Lopez was badly wounded and in need of assistance, knew he needed to render Zion unconscious to eliminate any further threat. Once the threat was eliminated, Deputy Higgins could safely provide medical assistance to Deputy Lopez. Deputy Higgins proceeded to deliver three deliberate strikes with his right foot to Zion's head, rendering him unconscious.

At 7:27 p.m., Deputy Higgins advised OCSD dispatch of "shots fired." At 7:28 p.m., Deputy Higgins advised OCSD dispatch that there was an officer-involved shooting and that there was a "deputy down."

Deputy Higgins returned to the last place he saw Deputy Lopez lying on the ground on the north side of his patrol vehicle. Upon Deputy Higgins' return, his patrol vehicle had rolled forward and collided with a tree and Deputy Lopez was gone. Deputy Higgins found Deputy Lopez several feet behind Deputy Lopez's vehicle, lying on his back in the roadway with his arms extended in a "cross position." While lying on the ground, Deputy Lopez felt both arms going cold and said to Deputy Higgins, "I'm bleeding out, I'm bleeding out." Deputy Higgins called out to Jane Doe 2, who was still by the garage, and requested her dog's leashes. Deputy Higgins used the dog's leashes to control the bleeding on Deputy Lopez's arms.

At 7:30 p.m., OCFA Medic #5 arrived on scene with Paramedics Ryan McCulloch and Steve Solomon. Upon Medic 5's arrival, Paramedic McCulloch observed Deputy Lopez lying in the street being treated by Deputy Higgins. Paramedic Solomon immediately began to provide medical aid to Deputy Lopez while Paramedic McCulloch went to assess Zion's condition. Paramedic McCulloch triaged Zion, who was not breathing and had no pulse. Paramedic McCulloch observed apparent gunshot wounds to Zion's chest and deemed him deceased. Paramedic McCulloch returned to assist Paramedic Solomon with treating Deputy Lopez. Paramedic McCulloch observed a significant laceration to Deputy Lopez's left-upper bicep, and a smaller laceration located on his right forearm. Both arms had tourniquets applied in an effort to control the bleeding. Both of the original tourniquets were removed by paramedics and replaced by proper, medically approved tourniquets.

Deputy Lopez was placed into an ambulance, where paramedics had better lighting and scene control. Inside the ambulance, Deputy Lopez's tourniquets were removed and paramedics deemed that he did not have any arterial bleeding from the wounds to his arms. The wounds were packed and pressure dressings were applied to control the bleeding. Paramedic Solomon placed an intravenous line to provide fluids and connected Deputy Lopez to a heart monitor to observe his vital signs. Deputy Lopez was alert and able to answer Paramedic Solomon's questions as to his identity, location, approximate time, and what had occurred.

Deputy Lopez, Zion's mother, and John Doe 1 were all transported separately to Mission Hospital Regional Medical Center in the City of Mission Viejo to be treated for their injuries.

During a consent search of John Doe 1's residence, a prescription pill bottle was located on the dresser in the upstairs east bedroom next to a wallet containing Zion's driver's license. The label on the bottle indicated the prescription was for Divalproex, 500 milligram tablets, 60 count, prescribed to Zion. The label indicated the common brand name was Depakote. A physical count revealed 58 pills remained in the container. The instructions on the label were to take one tablet by mouth twice daily. In the bathroom vanity of Zion's bedroom, two professional samples of Seroquel XR were located. Each package contained four, 50-milligram pills. One package was opened with one of the four pills remaining; the other remaining package was unopened.

AUTOPSY

On Sept. 29, 2013, at approximately 12:00 p.m., a postmortem examination of Zion was conducted by Doctor Joseph Cohen, a forensic pathologist. Doctor Cohen noted 11 bullet entry wounds into Zion's body. Following the autopsy, Doctor Cohen determined that Zion's death was the result of multiple gunshot wounds.

EVIDENCE COLLECTED AT AUTOPSY

- Heart blood standard
- Apparent bullets/fragments from Zion
- Apparent clothing fragments and fibers from Zion

EVIDENCE COLLECTED AT THE SCENE

- 16 Luger 9MM FC cartridge cases
- A knife with a black handle and approximately 6" blade
- A knife with a black handle and approximately 4" blade
- Samples of multiple apparent blood stains
- Multiple bullets and bullet fragments
- Silver Lumimax Digital, L5, flashlight
- A red flashlight
- A metal ring
- Zion's clothing

EVIDENCE COLLECTED AT HOSPITAL

- Uniform and equipment (i.e., Taser holster, lapel microphone, metal spring clip) of Deputy Lopez
- Clothing of John Doe 1
- Clothing of Zion's mother

EVIDENCE COLLECTED FROM DEPUTY HIGGINS

- Glock, Model 17C, 9mm, semi-automatic handgun, serial number UDK128, with "Trijicon" night sights, removed from the right side hip, Safariland holster affixed to Higgins' nylon gun belt
- One 9mm cartridge (head stamped – FC 9mm Luger) in the chamber of the Glock
- One magazine from the Glock contained the following: 16, 9mm cartridges from the magazine
- Two magazines from the left front magazine pouch of Higgins' gun belt contained the following: 17, 9mm cartridges from each magazine
- Uniform

EVIDENCE COLLECTED FROM TRUNK OF DEPUTY CHAPLUCK'S PATROL VEHICLE

- Deputy Lopez's gun belt (removed at scene to facilitate provision of medical treatment)
- One empty 17-round capacity, Glock, 9 millimeter handgun magazine (presumably from Deputy Higgins' handgun)
- One .40 caliber Federal cartridge

EQUIPMENT REMOVED FROM DEPUTY LOPEZ'S VEHICLE

- Glock 22 .40 caliber handgun, serial #LEW121
- Three Glock .40 caliber magazines, 15 round magazines filled to capacity. Two labeled "LOPEZ"
- X26 Taser, serial #407TA5001 containing both cartridges
- One silver folding pocket knife
- One black Mag light
- One black collapsible baton
- One key ring containing 3 keys

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Zion's postmortem blood yielded the following results:

DRUG	MATRIX	RESULT
Methamphetamine	Postmortem Blood	0.11 mg/L
Amphetamine	Postmortem Blood	0.083 mg/L

Firearm Examination

Deputy Higgins' handgun was test-fired and operated without malfunction.

ZION'S CRIMINAL HISTORY

The relevant portions of Zion's criminal history revealed numerous arrests for violations including being under the influence of a controlled substance, threat to kill, malicious mischief, assault, and possession of dangerous weapons.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; Manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to lawfully charge and convict an officer of any of these crimes, however, it would be required for the prosecution 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 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 Instructions 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/her 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 the "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 Deputy Higgins with Zion.

LEGAL ANALYSIS

The issue is whether Deputy Higgins' conduct was criminally culpable and without justification. As stated above, in order to lawfully charge Deputy Higgins with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for Deputy Higgins' conduct. If Deputy Higgins' actions were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

Self-defense justification in Penal Code section 197 provides, in part, that homicide is justifiable "when resisting any attempt to murder any person, or to commit a felony, or do some great bodily injury upon any person." In *Tennessee v. Garner, supra*, the United States Supreme Court held that an officer is entitled to use deadly force when the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily harm to the officer or others.

The facts in this case are determined largely by considering the shooting officer's statements to the OCDA Investigators, as well as reviewing all the available evidence including the witness statements and video recordings of the shooting incident.

Deputy Higgins stated that, as soon as he pulled up to the location, Zion ran out at full speed with a knife and began chasing Deputy Lopez. Shortly thereafter, Deputy Higgins observed Zion on top of Deputy Lopez on the ground, stabbing at him repeatedly. Deputy Higgins reasonably and justly believed that Zion intended to kill Deputy Lopez, so he exited his vehicle and began shooting Zion. These statements by Deputy Higgins are consistent with the video from Deputy Lopez's patrol vehicle, which shows Zion emerge from the darkness at a sprint, screaming "I'll kill you...you motherf****r." The statements of Deputy Higgins are also consistent with the serious injuries that Deputy Lopez suffered as a result of being repeatedly stabbed.

When Zion began to run off, Deputy Higgins believed Zion intended to attempt to kill additional individuals. This belief was reasonable in light of the fact that Deputy Higgins had just witnessed Zion engage in extreme and brazen violence against a peace officer for no apparent reason, and that Deputy Higgins had witnessed at least one civilian in a common area near the location where the stabbing of Deputy Lopez occurred. There is thus ample reliable evidence that when Deputy Higgins shot Zion, he was in reasonable fear for the life of Deputy Lopez and others at the condominium complex.

Where potential dangerous, emergency conditions or other exigent circumstances exist, the Supreme Court's definition of reasonableness is comparatively and rightfully generous to the police. In effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a

significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." *Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 528.

It should also be noted that, in order for Deputy Higgins to be justly and lawfully charged and convicted with a crime in this incident – be it murder, voluntary manslaughter or involuntary manslaughter - it is the OCDA's burden to prove beyond a reasonable doubt that Deputy Higgins did not act in reasonable and justifiable self-defense or defense of another when he shot at Zion. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly and lawfully conclude that it was reasonable for Deputy Higgins to believe that Deputy Lopez's life, and the lives of others, were in danger and that Deputy Higgins was thus justified when he shot and killed Zion.

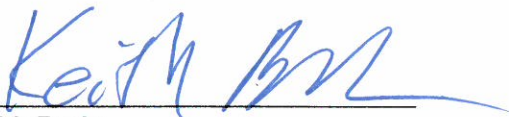
The obvious should also be clearly stated. Deputy Higgins' conduct in connection with this incident had the impact of saving the life of Deputy Lopez, who was ambushed and attacked by Zion. Deputy Higgins' conduct in using force in this incident was far from criminal.

CONCLUSION

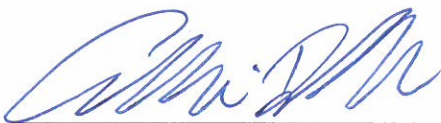
Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Deputy Higgins, and that there is ample significant evidence that Deputy Higgins' actions were reasonable and justified under the circumstances when he shot and killed Zion on Sept. 24, 2013. Deputy Higgins did not commit a crime; rather, he used justifiable force to save the life of an ambushed fellow deputy sheriff.

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

Respectfully submitted,



Keith Burke
Deputy District Attorney
Homicide Unit



Read and Approved by **Ebrahim Baytieh**
Acting Assistant District Attorney
Head of Court – Special Prosecutions Unit