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July 14, 2015

Chief Charles Celano  
Tustin Police Department  
300 Centennial Way  
Tustin, CA 92780

Re: Officer-Involved Shooting on Feb. 10, 2014  
Fatal Incident Involving Robert Villa  
District Attorney Investigations Case # SA 14-004  
Tustin Police Department Case # 14-778  
Orange County Crime Laboratory Case # FR 14-41793

Dear Chief Celano,

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 Tustin Police Department (TPD) Officers David Nguyen, Brian Stroud, and Scott Wright. Robert Villa, 23, did not survive his injuries. The incident occurred in the City of Tustin on Feb. 10, 2014.

## OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 10, 2014, fatal, officer-involved shooting of Villa. This letter includes an overview of the OCDA's investigative methodology, procedures, 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 is criminal culpability on the part of the TPD officers involved in the shooting. The format of this document has been developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Feb. 10, 2014, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 11 interviews were conducted, and 68 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: TPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, DNA, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Villa; criminal history records related to Villa, including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of TPD officers or personnel, specifically Officers Nguyen, Stroud, and Wright. The OCDA will not be addressing 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. Deputy District Attorneys 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 part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer David Nguyen provided a voluntary statement to the OCDA on July 11, 2014, and Officer Wright provided a voluntary statement to the OCDA on August 8, 2014. Officer Stroud did not cooperate with OCDA's investigation and declined to provide a voluntary statement to OCDA Investigators regarding this fatal shooting incident, and relied on his right against self-incrimination under the Fifth Amendment to the United States Constitution. As legally and ethically mandated, OCDA did not draw any negative inferences from Officer Stroud's invocation of his right to remain silent and refusal to provide a voluntary statement about his involvement in the shooting incident. During this investigation, Officers Nguyen and Wright cooperated with the investigation and they both acted professionally in their dealings with the OCDA. In addition, the Tustin Police Department was very cooperative with the OCDA's investigation and accommodated our investigation by making sure their administrative review of the conduct of the involved officers did not interfere with our criminal investigation.

### **FACTUAL SUMMARY**

Villa suffered from depression and bi-polar disorder. Villa's mother, Jane Doe 1, believed that Villa was not prescribed any medications for these conditions and stated, "He gets violent." Villa had moved back into an apartment with Jane Doe 1 and his stepfather, John Doe 1, following Villa's separation from his wife, Jane Doe 2. Villa was on parole for domestic violence and was not allowed to contact Jane Doe 2 or her family. Villa also was known to abuse methamphetamine and was further required, as a condition of parole, to submit to random drug testing and to complete a substance abuse treatment program. Villa had verbalized suicidal thoughts to Jane Doe 2 when under the influence of methamphetamine and expressed his aversion to returning to jail.

According to family members, Villa had not slept for approximately two days prior to the shooting incident and was "freaking out." The night before the incident, Villa woke John Doe 1 by continually "peeking" into John Doe 1's bedroom. John Doe 1 stated that Villa had been "using methamphetamine," and that he was "dehydrated" and "angry." According to family members, at some point in the morning of Feb. 10, 2014, Villa left to "get something to drink," but when he returned, he still acted "crazy." Family members attempted to ignore Villa's behavior, but he kept mumbling



incoherently about “devices and repeaters, and stuff the government can hear.” Villa also made statements to the effect of, “they’re going to kill me. I might as well go out like this.” John Doe 1 left the apartment to retrieve something from his vehicle and called Jane Doe 1 to tell her Villa was “acting up.” John Doe 1 also called the Tustin Police Department and informed the operator that Villa was “going crazy in the house.” During the conversation, the operator heard John Doe 1 yelling for someone to “go to the car.” Without providing any additional information, John Doe 1 informed the operator, “he’s already coming out [of the apartment], so you gotta come out here!”

As John Doe 1 walked back to the apartment, he passed his two other children who were leaving the apartment to get away from Villa. As John Doe 1 reached the apartment, Jane Doe 1 ran out of the apartment with Villa following her. Jane Doe 1 appeared scared and told John Doe 1 to call the police because Villa had “taken a knife to the wall and broke the door.” John Doe 1 and Jane Doe 1 walked east. The police operator remained on the line with John Doe 1 and attempted to elicit more information, but John Doe 1 simply replied, “You have to hurry up because the whole family is in the streets.” Eventually, John Doe 1 told the operator Villa was armed with a knife and he had “hit the wall with a knife or something.” A female, believed to be Jane Doe 1, was heard in the background providing similar information regarding Villa’s use of the knife. The woman went on to say that Villa was, “probably on drugs.”

At one point, John Doe 1 told the operator Villa no longer had a knife in his hand, but qualified the statement with, “not that I know of,” indicating uncertainty. John Doe 1 told the operator that Villa was a 23-year-old Hispanic male, approximately 5’ 10”, with a medium build, and black hair. John Doe 1 did not know what color pants Villa was wearing, but he knew that his shirt was gray. John Doe 1 went on to say that Villa was “talking nonsense, like he’s surveillance and stuff, and he wants to kill somebody.” John Doe 1 later changed that statement to say that Villa “actually said that they want to kill him.” John Doe 1’s conversation with the operator ended when the TPD officers arrived on the scene.

At approximately 11:35 a.m., TPD dispatched Officers Michelle Jankowski and Stroud to respond to the incident. Officers Wright and Nguyen volunteered to provide assistance as well. The responding units were advised that Villa “was going crazy,” and TPD records showed prior events at the location, including a probation search and two occurrences of family disturbance. Prior to the arrival of the officers, witnesses observed Villa in the courtyard of the apartment complex sticking a knife in and out of the grass. Villa also was seen talking on a cellular telephone, looking “agitated” and “angry,” and heard saying, “If you don’t come, I’ll kill myself!” At approximately 11:38 a.m., the four officers arrived at the location simultaneously and gathered in a group on the lawn near the corner of the west building of the complex. Officers Nguyen and Stroud were furthest ahead, by several feet, followed a short distance by Officers Jankowski and Wright. As the four officers rounded the corner of the building, they came upon Villa in the courtyard, approximately 12 to 45 feet away. Officer Nguyen noticed a large knife stuck in the grass next to Villa, and Officer Nguyen’s first impression was that Villa was a maintenance employee, possibly working on the sprinklers. Officer Nguyen also noticed that Villa was holding a cellular telephone in one hand.

Upon seeing the officers, Villa stood up, grabbed the knife, and began rolling his shoulders and pumping his arms, similar to what a boxer does to loosen up his shoulders before a fight. At this point, Officer Nguyen determined that Villa was not a maintenance employee, and he thought to himself, “[Villa’s] about to fight us—he’s about to do something. A maintenance guy would not do that.” At approximately 11:39 a.m., Officer Nguyen yelled, “Drop that knife dude. Drop that knife!” Officer Nguyen repeated the command at a louder decibel and slower cadence. Villa was unresponsive, so Officer Nguyen repeated the command one more time, and the other officers echoed the same command for Villa to drop the knife. Simultaneously, Villa yelled “fuck you!” and dropped or threw the cellular telephone. Villa then ran at the officers, still holding the knife in one hand, with the tip pointed upward. At this point, the four officers fanned out in a C-formation as a separation tactic to avoid injury.

Villa’s movements were consistent with a “charge” or “immediate sprint,” toward the officers. As Villa sprinted toward the officers, he gave no indication that he intended to drop the knife as instructed. Based on their statements, Officers Nguyen and Wright believed that non-lethal instruments, like Tasers, were not a viable option under these circumstances. Successful deployment of a Taser requires close proximity to the target, and if the wires did not seat properly on Villa, or the desired effect was not obtained, Villa would have been within stabbing range of the officers.



Similarly, Officer Nguyen did not attempt to use his baton, because he felt if Villa was within striking distance of his baton, then Officer Nguyen would be within stabbing distance of Villa's knife as well.

At approximately 11:39 a.m., Officers Nguyen, Stroud and Wright fired their pistols at Villa from a distance of approximately seven to 15 feet. Officer Nguyen fired seven times, Officer Stroud fired 11 times, and Officer Wright fired once. Although Officer Jankowski feared for her life, she did not fire her pistol because another officer was in her line of fire. The officers stopped firing when Villa fell to the ground and dropped the knife. Officers Stroud and Wright handcuffed Villa and began providing medical aid. Officer Jankowski ran to her police vehicle to retrieve a first aid kit. Villa continued to yell and fight with the officers as they attempted to render treatment. At approximately 11:47 a.m., Orange County Fire Authority Engine 72 and an ambulance arrived on the scene. Villa was agitated, and would not remain still during treatment. Paramedics were unable to access Villa's vital signs due to his combative nature. Villa was treated further at the scene and prepared for transport.

At approximately 11:53 a.m., Villa was transported via ambulance to Western Medical Center Santa Ana (WMCSA). While en route, Villa lost consciousness and went into full cardiac arrest. Cardio-Pulmonary resuscitation (CPR) was initiated and continuously performed during the ride to the hospital. At approximately 12 p.m., Villa arrived at WMCSA. Upon arrival, Villa's pupils were fixed and dilated, and he had no pulse or blood pressure. CPR was continued and Villa was intubated, but his vital signs did not improve. At approximately 12:08 p.m., the attending physician at WMCSA pronounced Villa deceased.

#### **Voluntary, Consensual Statement of Officer Michelle Jankowski**

Officer Jankowski provided a voluntary, consensual statement to the OCDA on Feb. 11, 2014. The following is a summary of her statement.

On the morning of February 10, 2014, Officer Jankowski was dispatched to a family disturbance incident in Tustin. Officers Nguyen, Stroud, and Wright responded to the scene as well. Officer Jankowski recalled Dispatch informing her that the subject "may be on parole, was throwing things and hitting things within the residence, and that there were possibly knives involved." Officer Jankowski was told that the subject was a Hispanic male, approximately 30 years old, and wearing "grey sweats."

Officer Jankowski gathered with the three other officers before approaching Villa. As Officer Jankowski began walking, she heard Officer Nguyen "say something along the lines of, 'Hey, man, drop the knife.'" At that point, she drew her weapon. When Officer Jankowski turned a corner, she saw Villa "standing there with a knife in his left hand and a cell phone in his right hand. He then threw the cell phone at us ... , and then almost immediately ... he started to lunge forward at us with a knife still in his hand."

Officer Jankowski recalled that all of the officers commanded Villa to drop the knife, but he was unresponsive. She also noted that the courtyard of the apartment complex was large in size, and if Villa wanted to escape from officers, he had ample opportunity to run east or south. The fact that he chose to run towards the officers led Officer Jankowski to believe that Villa intended to harm the officers, rather than escape. Officer Jankowski was aware that the officers' vests "can only do so much," and if Villa were to reach them with his knife, he could potentially kill them. Villa continued to advance towards the officers at a rapid pace, and Officer Jankowski's fellow officers fired at Villa. Officer Jankowski indicated that she feared for her life and would have fired at Villa as well, but she did not have a clear line of fire. After the shots were fired, Villa fell to his knees and continued yelling at the officers. Officer Jankowski approached Villa with Officers Stroud and Wright. When Officer Stroud and Wright began tending to Villa, Officer Jankowski ran to her vehicle to retrieve a first aid kit. Officer Jankowski indicated that Villa "had to be held down by the officers and paramedics," and they were eventually able to secure him to a gurney and transport him.

### **Voluntary, Consensual Statement of Officer David Nguyen**

Officer Nguyen gave a voluntary, consensual statement to the OCDA on July 11, 2014. The following is a summary of his statement.

On the morning of Feb. 10, 2014, Officer Nguyen heard a call from Dispatch regarding a family disturbance incident in Tustin. Officers Jankowski and Stroud were directed to respond to the scene. Officers Nguyen and Wright volunteered to provide assistance as well. The four officers arrived at the scene at the same time and approached the Does' apartment together. Officer Nguyen was the first officer to "clear the corner" and he saw Villa in the courtyard grass. Villa was "doing something on the grass," and Officer Nguyen thought he was a "maintenance person." Villa looked over at Officer Nguyen and picked up a knife that was stuck in the ground. Villa then stood up and "rolled his shoulders, it's just like when you're in boxing match ... You're getting ready to fight." At this point, Officer Nguyen drew his firearm and ordered Villa to drop the knife. Officer Nguyen repeated the command three more times, and Villa was unresponsive.

Villa charged towards the officers with his knife in his hand. When Officer Nguyen saw Villa advancing toward him with the knife in his hand, he recalled a prior incident in which he [Officer Nguyen] was stabbed while on duty. During this prior incident, Officer Nguyen suffered injuries that resulted in two scars under his left eye, a dark scar on his right bicep, and a shoulder injury for which he still receives physical therapy. Officer Nguyen thought, "He's running towards me with this knife, and I don't want to get stabbed again. I didn't want to go through the pain and physical therapy again. I don't want my partners to get stabbed. That's a long knife, somebody's going to get seriously hurt or killed if he gets any closer to us." Officer Nguyen felt that if he did not shoot and stop Villa's advancement, he, and possibly his partners, would be stabbed and severely injured or killed by Villa. Therefore, Officer Nguyen fired at Villa, who was still advancing at the officers with a knife in his hand. Officer Nguyen recalled firing more than one shot but less than five at Villa. Officer Nguyen could not tell if any of his shots hit Villa. Officer Nguyen remembered that Villa was still coming at him despite the multiple gunshots, so Officer Nguyen retreated as he fired. Eventually, Villa fell to the ground and Officer Nguyen ceased fire. Officer Nguyen's partners approached Villa and tended to him as Officer Nguyen went to secure the perimeter of the apartment complex.

### **Voluntary, Consensual Statement of Officer Wright**

Officer Wright gave a voluntary, consensual statement to the OCDA on Aug. 8, 2014. The following is a summary of his statement.

On the morning of Feb. 10, 2014, Officer Wright heard a call from Dispatch regarding a family disturbance incident in Tustin. Officers Jankowski and Stroud were directed to respond to the scene. Based on the details of the call, Officer Wright volunteered to respond and provide assistance because, "It didn't sound like it was gonna be a good call...I thought that Stroud and Michelle [Jankowski] were gonna have a fight on their hands...I thought it was gonna be a fight, but I had no clue it'd be a shooting." Officer Nguyen volunteered to provide assistance as well. The four officers arrived at the scene at the same time and approached the Does' apartment together.

Officer Wright could not see Villa when he heard Officer Nguyen "yelling about a knife." Officer Wright moved forward and saw Villa with a knife in his right hand. Officer Nguyen commanded Villa to drop the knife, but Villa was unresponsive. According to Officer Wright, Villa had "both hands clenched and knife in his right hand, and he let out a loud yell and then [went] full bore into Dave [Nguyen]." As Villa charged at Officer Nguyen, Officer Wright recalled that "Dave [Nguyen] got in a bad fight like two years ago and got stabbed. It was a 415, family disturbance, and he almost died." Seeing Villa charge at Officer Nguyen, Officer Wright thought to himself, "I can't let him kill Dave [Nguyen]." Officer Wright indicated that Officers Nguyen and Stroud fired at Villa as he charged. It was apparent to Officer Wright that Villa was hit by one or more projectiles, but Villa did not stop. Officer Wright was fearful Villa was still trying to stab or harm Officers Nguyen or Stroud. Believing that Villa was going to continue to attack Officers Nguyen and Stroud, Officer Wright fired one shot, and as he did so, Villa fell to the ground. Officers Stroud and Wright then handcuffed Villa and provided medical treatment until paramedics arrived.

## **AUTOPSY**

On Thursday, Feb. 13, 2014, a postmortem examination of Villa was conducted by Dr. Etoi Davenport, a forensic pathologist for the Orange County Sheriff-Coroner. Dr. Davenport determined that five bullets struck Villa, as follows: a penetrating gunshot wound of the right back, a perforating gunshot wound of the left forearm, a through and through gunshot wound of the left thigh, a perforating gunshot wound of the right thigh, and a penetrating gunshot wound of the right thigh. Following the autopsy, Dr. Davenport opined that Villa's death was the result of multiple gunshot wounds.

## **EVIDENCE COLLECTED**

The following items of evidence were collected from the scene and autopsy:

- 12 cartridge casings, head stamp "Winchester 45 Auto"
- 7 cartridge casings, head stamp "Winchester 45 S&W"
- 8 projectiles from the scene
- 2 bullets from the autopsy
- Black plastic-handled knife, with an approximately eight-inch blade
- Black Samsung Galaxy cellular telephone, battery, and battery cover

The following items of evidence were collected from Officer Nguyen:

- Glock, Model 21, .45 caliber semi-automatic pistol, with attached Sure Fire brand X300 light
- 13 round capacity magazine from the pistol containing six Winchester .45 Auto cartridges
- 1 Winchester .45 Auto cartridge from the chamber of the pistol
- 1 additional 13-cartridge capacity magazine filled to capacity with Winchester .45 Auto cartridges

The following items of evidence were collected from Officer Stroud:

- Glock, Model 21, .45 caliber semi-automatic pistol, with attached Sure Fire brand X200 light
- 13 round capacity magazine from the pistol containing two Winchester .45 Auto cartridges
- 1 Winchester .45 Auto cartridge from the chamber of the pistol
- 2 additional 13-cartridge capacity magazines filled to capacity with Winchester .45 Auto cartridges

The following items of evidence were collected from Officer Wright:

- Glock, Model 21, .45 caliber semi-automatic pistol, with attached Sure Fire brand X200 light
- 13 round capacity magazine from the pistol containing twelve Winchester .45 Auto cartridges
- 1 Winchester .45 Auto cartridge from the chamber of the pistol
- 1 additional 13-cartridge capacity magazine filled to capacity with Winchester .45 Auto cartridges

## **EVIDENCE ANALYSIS**

### **Firearm and Cartridge Casings Examination**

All three Glock pistols were test fired and performed without malfunction. Seven cartridge cases from the scene were determined to have been fired from Officer Nguyen's firearm. Eleven cartridge cases from the scene were determined to have been fired from Officer Stroud's firearm. One cartridge case from the scene was determined to have been fired from Officer Wright's firearm. It could not be determined if any of the 10 bullets collected as evidence were fired from any of the Glock pistols.

### **Toxicological Examination**

A sample of Villa's postmortem blood indicated the presence of methamphetamine, amphetamine, tetrahydrocannabinol and tetrahydrocannabinol carboxy-acid.

### **VILLA'S PRIOR CRIMINAL HISTORY**

The Orange County District Attorney's Office reviewed and considered Villa's prior criminal history, which consisted of multiple incidents of domestic violence committed against the mother of his child, burglary, violation of a protective court



order, damaging a wireless device, disorderly conduct, minor in possession of alcohol, and violation of parole. At the time of the incident, Villa was on parole for felony domestic violence, after completing his sentence of two years in state prison.

### **STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES**

Possible criminal charges against an officer involved in a fatal 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]. To convict an officer of any of these charges, it must be proven beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-42.) Several justifications may apply in any case as 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. The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332-33.)

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. This 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." The Court of Appeal 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." (*Id.*) 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 505 permits a person to use deadly force to defend himself or someone else if he reasonably believes the immediate use of deadly force is necessary to defend against imminent danger of being killed or suffering great bodily injury. The law requires that no more force be used than was reasonably necessary to defend against that danger. Furthermore, 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, 641-42.) In addition, courts have held 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 physical injury to the officer or others." (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124; *Tennessee v. Garner* (1985) 471 U.S. 1, 3.)

This limitation was subsequently clarified by the United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386, wherein the High 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 High 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 rapidly evolving—about the amount of force that is necessary in a particular situation." (*Id.* at 396-97.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of TPD Officers Nguyen, Stroud, and Wright with Villa.

## LEGAL ANALYSIS

The facts in this case are determined by considering the statements provided by Officers Nguyen, Jankowski, and Wright to OCDA Investigators, which were supplemented by other relevant material.

The issue is whether the conduct of Officers Nguyen, Stroud, and Wright on Feb. 10, 2014, was criminally culpable and without justification. As stated above, in order to charge any of the three officers with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge the officers with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions of Officers Nguyen, Stroud, and Wright were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a relatively recent case, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [ ] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potentially dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that, 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*, *supra*, 171 Cal.App.4th at p. 528.)

Relying on the voluntary statements of Officers Nguyen and Wright, regarding their respective states of mind at the time of the shooting, it is abundantly clear that both Officers Nguyen and Wright were justified in believing Villa posed a significant threat of death or serious physical injury to their partners and themselves. An individual, armed with a knife, charging at peace officers, and ignoring their commands to stop and drop the weapon, is an individual who clearly represents imminent harm of death or serious injury to the involved officers. This conclusion is based on the totality of the circumstances, but primarily upon the conduct of Villa in the moments leading up to the shooting. Immediately upon seeing the officers, Villa grabbed a knife and stood up. Despite numerous commands to drop the knife, Villa yelled, "Fuck you!!" and charged towards the officers from approximately seven to 15 feet away. To minimize the threat, Officers Nguyen and Wright reasonably and justly felt that they needed to use deadly force to stop Villa and prevent him from causing them any deadly harm. Therefore, it is clear that Officers Nguyen and Wright did not commit a crime when they fired at Villa. To the contrary, the evidence supports a conclusion that when Officers Nguyen and Wright fired their weapons, they were acting lawfully, reasonably and justifiably.

Officer Stroud refused to provide a voluntary statement to OCDA regarding his involvement in the shooting and specifically his frame of mind at the time of the shooting. As a result, the OCDA convened a Grand Jury to look into Officer Stroud's involvement in the shooting and to discern his frame of mind at the time he discharged his weapon. After considering all the available material and evidence, the OCDA concluded that there is a lack of sufficient evidence to prove beyond a reasonable doubt that Officer Stroud committed a crime when he shot at Villa.



In order for Officers Nguyen, Stroud, and Wright to be justly and lawfully charged and convicted of a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that the officers did not act in reasonable and justifiable self-defense, or defense of another, when they shot at Villa. As should be apparent from the above-described analysis, particularly regarding Officers Nguyen and Wright, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly and fairly conclude that it was reasonable for all of the officers to believe that their lives were in danger.

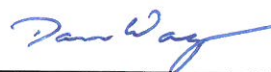
### **CONCLUSION**

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that, first, there is no evidence of criminal culpability on the part of Officers Nguyen and Wright. To the contrary, there is overwhelming evidence that Officers Nguyen and Wright were reasonably justified under the circumstances when they shot Villa on February 10, 2014. Second, there is a lack of sufficient evidence to prove beyond a reasonable doubt that Officer Stroud committed a crime when he shot at Villa on February 10, 2014.

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



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