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October 11, 2018

Chief Todd Elgin  
Garden Grove Police Department  
11301 Acacia Parkway  
Garden Grove, CA 92840

Re: Officer-Involved Shooting on March 11, 2018  
Fatal Incident involving Shawn Pettus  
District Attorney Investigations Case # SA 18-011  
Garden Grove Police Department Case # 18-014025  
Orange County Crime Laboratory Case # 18-43674

Dear Chief Elgin,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed shooting incident involving on-duty Garden Grove Police Department (GGPD) Officers Phillip Pham and Jared Doyle. Shawn Pettus, age 37, died as a result of his injuries. The incident occurred in the City of Garden Grove on March 11, 2018.

### **OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the March 11, 2018, fatal, officer-involved shooting of Shawn Pettus. 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 Garden Grove officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability in law enforcement.

On March 11, 2018, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, seven interviews were conducted, and 20 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: GGPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Pettus; criminal history records related to Pettus 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 Garden Grove Police Department officers or personnel, specifically Officers Pham and Doyle. The OCDA will not be addressing any possible issues relating to 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, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, who will ultimately 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. Officers Pham and Doyle gave voluntary statements to OCDA Investigators on April 18, 2018.

### **FACTUAL SUMMARY**

On March 11, 2018, at approximately 12:30 a.m., Pettus was sitting in the driver's seat of a white 2017 Honda Accord with two passengers, a male sitting in the front passenger seat and a female in the back seat, in the parking lot of the Grove Motel in Garden Grove. Pettus was smoking methamphetamine and marijuana while they were in the parking lot. The male passenger was sleeping in the front seat of the car.

At approximately 12:33 a.m. on March 11, 2018, GGPd Officers Pham and Doyle were on duty conducting foot patrol in the north parking lot area of the Grove Motel. Due to the high rate of criminal activity in that area, Officer Pham checked the parked cars on the east side of the parking lot while Officer Doyle checked the cars on the west side of the parking lot. Approximately halfway through Officer Doyle's search of the west side of the parking lot, he came across the Honda Accord in a westbound facing parking stall. The Accord was parked in between two other cars and was facing a block wall. Officer Doyle approached the passenger side of the Accord, but noticed that the windows were tinted in a manner that made it difficult for him to look inside the car. Officer Doyle then used his flashlight to attempt to look inside the front passenger side window of the Accord and was only able to observe the two occupants seated in the driver's and front passenger seat. The car's engine was turned off when Officer Doyle initially approached the car.

When Officer Doyle looked through the passenger window, he saw Pettus sitting in the driver's seat of the Accord with the seat reclined back. Officer Doyle identified himself as a police officer and told Pettus to place his hands on the steering wheel. Pettus did not roll down the windows or make any attempt to comply with Officer Doyle's commands. The male and female passenger each put their hands in the air. Pettus did not comply with Officer Doyle's command and left his hands in his lap.

Officer Doyle then loudly repeated the command and said "Garden Grove Police, put your hands on the steering wheel." Officer Pham approached the driver's side of the Accord. Officer Doyle then saw Pettus lunge his hips forward and put both of his hands down toward his waistband in a manner that looked like Pettus was reaching with his right hand into his right front pants pocket and his left hand was not visible. Pettus then started the vehicle and began reversing the car out of the parking stall. The passengers told Pettus to stop the car. At this time Officer Pham was also giving continuous commands to stop the car. Pettus did not comply and continued to reverse the vehicle out of the parking stall.

As Pettus backed out, he turned the Accord's steering wheel and quickly accelerated the car. Pettus struck Officer Pham's right knee and ran over Officer Pham's right foot with the Accord. This trapped Officer Pham between the Accord and an unoccupied black SUV parked next to the Accord. Pettus then collided with the black SUV which resulted in Officer Pham being pushed in front of the Accord in order to avoid being completely pinned against the black SUV. Officer Pham was then standing directly in front of the Accord. Both Officer Pham and Officer Doyle were afraid that Pettus would then accelerate the Accord forward where they were trapped by the other cars and wall, and be further injured. Officer Doyle then fired four rounds through the front windshield of the Accord, striking Pettus. Officer Pham fired three rounds through the front windshield of the Accord also striking Pettus.

The female that had been seated in the back seat jumped out of the car with her hands up. The male front passenger was later ordered to get out of the Accord and he complied. Neither passenger was injured. Pettus was transported to the hospital where he later succumbed to his injuries.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- Four Winchester 45 cartridge casings
- Three Winchester 40 cartridge casings
- One silver cell phone
- Clothing, personal effects
- One small folding knife
- One glass pipe
- Two bullets
- One knife
- One wallet

### **AUTOPSY**

On March 14, 2018, Forensic Pathologist Dr. Etoi Davenport of the Orange County Coroner's Office conducted an autopsy on the body of Shawn Pettus. Dr. Davenport concluded the bullet wound to the cranium above Pettus' right eye penetrated his brain and partially exited the lower left portion of his skull to be fatal. A bullet entered Pettus' right eye and exited through his left cheek and another bullet entered his right cheek. Pettus sustained two non-fatal bullet wounds on the bicep and forearm of his right arm. Dr. Davenport concluded Pettus died as a result of the gunshot wounds.

### **EVIDENCE ANALYSIS**

#### **Firearms Examination**

Officer Pham's department issued Glock semi-automatic handgun was test fired at the OCCL and fired without malfunction in single and double actions. The projectile from inside Pettus' right cheek was determined to be fired from Officer Pham's handgun.

Officer Doyle's department issued Glock semi-automatic handgun was test fired at the OCCL and fired without malfunction in single and double actions. The projectile from inside Pettus' skull was determined to be fired from Officer Doyle's handgun.

### **Toxicological Examination**

A sample of Pettus' postmortem blood was collected for testing. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

| DRUG            | MATRIX           | RESULTS & INTERPRETATIONS |
|-----------------|------------------|---------------------------|
| Ethanol         | Postmortem Blood | 0.022 +0.003% (w/v)       |
| Amphetamine     | Postmortem Blood | 0.262+0.020 mg/L          |
| Methamphetamine | Postmortem Blood | 1.33+0.10 mg/L            |
| THC             | Postmortem Blood | 0.0035+0.0005 mg/L        |
| Carboxy-THC     | Postmortem Blood | 0.0254+0.0031 mg/L        |

### **PETTUS' PRIOR CRIMINAL HISTORY**

Pettus had an extensive California Criminal History that dates back to 1998. He has previously been arrested for the following charges:

- Carjacking
- Conspiracy
- Driving Without a License
- Felony Evading Police – Wrong Way Driver
- False Imprisonment
- False Impersonation
- Felony Domestic Violence
- Felony Evading Police Officers
- Felony Identity Theft
- Giving False Information To A Police Officer
- Grand Theft
- Misdemeanor Evading Police
- Misdemeanor Domestic Violence
- Parole Violations
- Possession Of A Controlled Substance
- Possession Of Narcotics Parahanalia
- Possession Of Stolen Property
- Post-Release Community Supervision Violations
- Probation Violations
- Robbery
- Resisting Arrest
- Stolen Vehicle
- Trespass With Damage To Property
- Vehicle Theft With Priors
- Warrants

### **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]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982))

135 Cal.App.3d 335, 340-342.) 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. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 333.)

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” 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.” (*Kortum v. Alkire, supra*, 69 Cal.App.3d at p. 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/she is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she 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/her mind, as a reasonable person, an honest fear and conviction that he/she 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 physical injury to the officer or others.”

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (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

rapidly evolving—about the amount of force that is necessary in a particular situation” (*Id.* at 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of Garden Grove Officers Pham and Doyle with Pettus.

### **LEGAL ANALYSIS**

The facts in this case are determined by considering both Officer Pham and Officer Doyle's statements to the OCDA investigators, which were supplemented by other relevant material and witnesses present during the incident.

The issue is whether the conduct of Officer Pham and Officer Doyle on March 11, 2018, was criminally culpable and without justification. As stated above, in order to charge Officer Pham or Officer Doyle 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 Officer Pham or Officer Doyle with a crime, the prosecution must prove beyond a reasonable doubt they did not act in lawful self-defense. If the actions of Officer Pham or Officer Doyle were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal has held, 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 potential 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.)

It is clear based on the totality of the available evidence here that Officer Pham and Officer Doyle were justified in believing Pettus posed a significant threat of death or serious physical injury to both officers. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Pettus in the moments leading up to the shooting.

Pettus was parked at night in an area known for high rates of criminal activity. Officer Doyle and Officer Pham were patrolling the area on foot. The windows of the Accord were so dark that both Officer Doyle and Officer Pham needed to use their flashlights to see inside the car. All of these circumstances placed both Officer Doyle and Officer Pham at a significant safety disadvantage. When Officer Doyle observed there were at least two occupants inside of the Accord, he identified himself as a police officer and asked Pettus to place his hands on the steering wheel and for the passenger to put his hands up. The two passengers in the Accord placed their hands in the air, showing that Pettus also must have heard Officer Doyle's command. When Pettus did not comply, Officer Doyle commanded him to place his hands on the steering wheel again. Pettus again did not comply and left his hands in his lap.

Officer Pham approached the Accord on the driver's side to assist and Officer Doyle saw Pettus lunge his hips forward and put both of his hands down toward his waistband in a way that looked like Pettus was reaching with his right hand into his right front pants pocket and his left hand was out of view. This is consistent with Officer Doyle's reasonable belief Pettus could possibly be reaching for a weapon. Pettus then reversed the Accord, despite continuous commands from

Officers Doyle and Pham to stop the car. Pettus ran over Officer Pham's foot, struck Officer Pham's knee, and almost trapped Officer Pham against the black SUV parked next to the Accord. Officer Pham was only able to avoid being trapped against the black SUV by moving in front of the Accord. Pettus quickly accelerated the Accord in reverse until it struck the black SUV leaving Officer Pham standing directly in front of the Accord with a wall behind him and nowhere to go. At this point, Pettus had already injured Officer Pham by running over his foot and striking his knee, placing both Officer Pham and Officer Doyle in reasonable fear that Pettus would accelerate forward and hit Officer Pham again. This was the time when both officers fired at Pettus. The deadly response by the officers was reasonable and justifiable based on the totality of all the circumstances.

Officer Doyle and Officer Pham's actions were reasonable in light of the unfolding dangerous situation as Pettus would not comply with numerous commands to place his hands where the officers could see them and instead turned on the Accord and started to reverse. After running over Officer Pham, Pettus nearly pinned Officer Pham against the black SUV, and when Officer Pham escaped it was only to be further placed in harm's way at the front of the Accord. It is clearly reasonable that Officer Pham believed his life was in danger when he was trapped in between a wall and the front of the Accord, causing him to fire his weapon. In addition, Officer Doyle also reasonably believed his partner's life to be in danger. Officer Doyle and Officer Pham's belief that it was necessary to employ deadly force to stop this threat was therefore reasonable under the circumstances.

It should also be noted that, in order for Officer Pham or Officer Doyle to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officer Pham or Officer Doyle did not act in reasonable and justifiable self-defense or defense of another when they shot at Pettus. 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 conclude that it was reasonable for Officer Pham and Officer Doyle to believe that their lives were in danger and needed to defend themselves and each other. Therefore, Officer Pham and Officer Doyle were justified when they shot at Pettus. Simply stated, Officer Pham and Officer Doyle did not commit a crime. To the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner.

### **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 there is no evidence of criminal culpability on the part of Officer Pham and Officer Doyle, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Pettus on March 11, 2018.

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



**LORI SMITH**

Deputy District Attorney  
TARGET/Gangs UNIT



Read and approved by **EBRAHIM BAYTIEH**

Senior Assistant District Attorney  
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