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December 8, 2014

Chief Jay R. Johnson
Newport Beach Police Department
870 Santa Barbara Dr.
Newport Beach, CA 92660

Re: Officer-Involved Shooting on May 29, 2014
Fatal Incident involving Gerrit Dean Vos
District Attorney Investigations Case # S.A. 14-008
Newport Beach Police Department Case # 14-3952
Orange County Crime Laboratory Case # 14-47261

Dear Chief Johnson,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the fatal officer-involved shooting incident involving on-duty Newport Beach Police Department (NBPD) Officers Richard Henry and Nathan Farris. Gerrit Dean Vos, 22, died as a result of his injuries. The incident occurred in the City of Newport Beach on May 29, 2014.

OVERVIEW

This letter contains a description of the scope of, and the legal conclusions resulting from, the OCDA's investigation of the May 29, 2014, fatal officer-involved shooting of Vos. 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 NBPD 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 and transparency in law enforcement.

On May 29, 2014, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of the investigation, the OCDASAU interviewed 24 witnesses and contacted 28 additional witnesses during the supplemental canvass interviews. Investigators also obtained and reviewed the following: NBPD reports, audio and video recordings, 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 Vos; criminal history records related to Vos, including prior incident reports; and other relevant reports and materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of NBPD Officers or personnel, specifically Officers Henry and Farris. 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 statements from the involved Officers. Officer Henry and Officer Farris each gave separate, voluntary statements to OCDA Investigators on June 3, 2014, and July 10, 2014, respectively.

FACTUAL SUMMARY

Gerrit Dean Vos was a 22-year-old male who had been diagnosed with schizophrenia. Vos had been in multiple drug rehabilitation programs approximately over the past six years. In 2013, Vos started using methamphetamine heavily, which resulted in him staying in a drug and alcohol treatment and rehabilitation center located in San Clemente, California.

On May 27, 2014, Vos called John Doe #1, a friend he had known since 2012, and asked if he could visit John Doe #1 at his apartment, located on West 15th Street in Newport Beach. John Doe #1 had not heard from Vos for approximately four to five months prior to the telephone call. Vos arrived at John Doe #1's apartment and gave haircuts to John Doe #1 and a friend of John Doe #1. John Doe #1 described Vos as seeming normal and stated that Vos did not display any unusual behavior.

On May 29, 2014, at approximately 7:30 p.m., Vos arrived unexpectedly at John Doe #1's apartment. John Doe #1 described Vos as being "not himself" and acting paranoid. Vos told John Doe #1 that there were people outside watching him (Vos). Vos frequently yelled, "Come and get me!" and, "I'm here.... I'm here!" for no apparent reason and at no particular person.

At approximately 8:00 p.m., Vos continued to act in a strange manner, and John Doe #1 became concerned for the safety of his 10-year-old son, who was also present at John Doe #1's apartment. John Doe #1 gave Vos a skateboard, and told Vos he was scaring his son. John Doe #1 then told Vos to "leave and clear his head." Vos left the apartment and did not return. As far as John Doe #1 knows, Vos did not ingest any illegal drugs or medication while at John Doe #1's apartment.

At approximately 8:15 p.m., Vos arrived at the 7-Eleven convenience store located at 1495 Superior Avenue, in Newport Beach. According to witnesses, Vos rode a skateboard into the north parking lot of the store, and was talking to himself as he approached 7-Eleven's front doors.

At approximately 8:16 p.m., Vos rushed into the 7-Eleven, ducked between two aisles, and appeared to be hiding from someone. According to witnesses, as he hid, Vos stated that someone was trying to kill him. Approximately five to ten

seconds later, John Doe #2 walked into the 7-Eleven and went directly to the refrigerated section to purchase a beverage. As John Doe #2 approached the refrigerators, Vos removed a screwdriver from a display shelf and ran down the aisle towards John Doe #2 and began yelling and swearing at him. According to witnesses, Vos shouted, "Get the f*** out of here, f*** you, get the f*** out of here!"

Vos then turned his attention to John Doe #3, a customer who had been standing in line at the checkout counter to make a purchase. According to witnesses, Vos yelled at John Doe #3, "That's the mother f***** right there!" John Doe #3 feared Vos was going to stab him with the screwdriver so he turned and headed towards the front door to exit the 7-Eleven. As he ran outside, he noticed Vos running close behind him. Vos yelled, "You can't get me." As John Doe #3 was running in the parking lot, Vos threw the screwdriver at John Doe #3, which missed John Doe #3 and hit a parked car.

Vos then re-entered the 7-Eleven. Vos told the 7-Eleven store clerks "Shoot me," and, "I know you have a gun." NBPD received a 911 emergency call from one of the 7-Eleven store clerks, who requested police assistance as a result of the erratic behavior being exhibited by Vos. The other 7-Eleven store clerk feared Vos may attempt to harm an employee or customer, so he went into the office area behind the cash register counter to look for something he could possibly use to defend himself against Vos.

At approximately 8:19 p.m., Vos jumped over the counter and entered the area behind the employee counter. Vos asked the store clerks if a gun was there. Vos took an approximately 12" pair of scissors from one of the shelves and walked out from behind the counter. After yelling that he had scissors, Vos approached the front doorway of the 7-Eleven. When Vos re-entered, Vos took off his jacket and jumped over the counter a second time. Vos then grabbed one of the 7-Eleven store clerks. The second 7-Eleven store clerk, fearing Vos was about to stab his coworker with the scissors, reached for Vos' right hand in an attempt to disarm him. Vos twisted his arm away, and the two men wrestled for control of the scissors. During the altercation, the 7-Eleven store clerk received an approximately two to three inch laceration to the palm of his right hand from the scissors.

Vos was able to maintain possession of the scissors and walked away from behind the counter area. Vos went to the front doorway and then again re-entered the store. Vos then jumped over the employee counter a third time, searched through the drawers behind the counter and yelled, "Where's the gun?"

At approximately 8:21 p.m., NBPD Officer Dave Kresge arrived on scene and observed Vos standing behind the cash registers on the front counter. According to Officer Kresge, Vos appeared "visibly agitated," with his hands tensed up in front of him and was screaming and yelling unintelligible words. Officer Kresge believed that Vos was under the influence of drugs or bath salts. Both store clerks exited the 7-Eleven once Officer Kresge arrived on scene.

A short time later, Vos was standing behind the front counter looking out the 7-Eleven's glass doors towards Officer Kresge who was waiting outside for backup to arrive. Vos put his right hand behind his back near his waist. According to Officer Kresge, Vos then pantomimed having a gun, by wrapping his right hand in a dark article of clothing and brought the arm parallel with the floor pointing it out the doors. Officer Kresge believed Vos was trying to get Officer Kresge to shoot Vos. Kresge broadcasted on the police radio the updated information.

Additional NBPD officers arrived on scene and Vos closed himself inside the room located behind the cash registers. NBPD Sergeant Peter Carpentieri, Sergeant Rachel Johnson, Sergeant Steve Rasmussen, and Officers Nathan Farris, Richard Henry, Shawn Preasmyer, Andrew Shen, Adam Gilbert, Michael Fletcher and Todd Bush positioned themselves to the north side of the glass front doors of the 7-Eleven.

Two NBPD vehicles were parked in a "V" formation directly south of the front entrance doors of the 7-Eleven. Officer Shen, armed with a NBPD issued Defense Technology 40 millimeter less lethal launcher, was positioned behind the driver door of one of the vehicles. Officers Farris and Henry were each armed with a NBPD issued AR-15 rifle, and were positioned behind the other doors of the police vehicles. Officer Kresge was also positioned behind a door of one of the police vehicles, armed with his department issued handgun.

At approximately 8:39 p.m., several NBPB Officers opened both glass entrance doors of the 7-Eleven and propped them open. At approximately 8:42 p.m., Vos opened the door to the room behind the cash registers that he had been hiding inside of and abruptly exited. Officer Henry observed the door open and advised the other officers that Vos was coming out. Vos immediately began to run south from the door, and upon clearing the west end of the front counter, turned east and ran at full speed toward the open entrance/exit doors where officers were positioned. Vos had a two prong, approximately six inch metal display hook in his left hand, with his arm raised above his head. Officer Farris described the object being held by Vos in a "stabbing position."

As Vos ran towards the Officers positioned outside, Officer Preasmeyer used the public address system of one of the NBPB vehicles to order Vos to "drop the weapon." Vos disregarded the order, and continued sprinting toward the doors, closing the distance at a rapid pace. Vos did not say anything as he ran towards the officers.

According to Officer Shen, Vos was running toward the officers with an object in his left hand, which was elevated above his head. When Vos reached the door to the 7-Eleven, it was Shen's intention to try and put him down with the less lethal weapon, so that officers would not have to use lethal force against Vos. Shen fired the 40 millimeter less lethal projectile at Vos when Vos was about half way to the doors of the 7-Eleven. Officer Shen did not see whether or not the projectile struck Vos, but stated that it had no effect on Vos and Vos continued advancing.

According to Officer Henry, Vos advanced to a point approximately three to four feet inside the 7-Eleven doors. Officer Henry estimated that at the pace Vos was advancing, he would cover the remaining distance between him and the officers in less than one second. According to Officer Henry, he also saw that Vos was armed with a weapon, he did not know what the weapon was, but he was thinking it was scissors because Vos previously had been armed with scissors. Officer Henry believed that Vos could utilize the weapon to harm the officers if he reached their position. This fear, coupled with his belief that Vos would be upon them within one second, led Officer Henry to discharge his AR-15 four times.

According to Officer Farris, he saw Vos sprinting at them with his left hand elevated, holding a metallic object in what Farris described as a "stabbing position." When Vos was approximately four feet from the threshold of the 7-Eleven doors, leaving a distance of less than 10 feet between him and the officers, Officer Farris feared Vos was going to continue his advance and "kill his partner" or himself, so he fired his AR-15 four times.

After Vos was struck by the bullets, Vos continued running east out of the doors of the 7-Eleven, bending at the waist and rolling forward onto the sidewalk outside of the doors. Vos' forward momentum caused him to come to rest on his back with his upper torso on the sidewalk and his lower body in the parking lot. Vos' legs were at the front of and in between the two NBPB vehicles.

At approximately 8:43 p.m., Sergeant Rachel Johnson broadcast "998" (Officer involved in shooting). At approximately 8:44 p.m., Newport Beach Fire Department (NBFD) paramedics were cleared to enter the scene and begin treating Vos. NBFD paramedics removed Vos' shirt, completed spinal immobilization with a cervical collar, and examined his wounds. Vos was administered oxygen via an Oropharyngeal airway. An Intravenous Therapy (IV) line was attempted, but Vos' positioning on a backboard and low blood pressure prevented vascular access. Series vitals obtained at 8:54 p.m., 8:59 p.m., and 9:04 p.m. indicated that Vos' blood pressure was in steady decline.

At approximately 8:54 p.m., Vos was transported to Western Medical Center-Santa Ana (WMCSA) by NBFD Medic 62. While en route to WMCSA, paramedics monitored Vos' vital signs, assisted his breathing with positive pressure ventilation, and administered a Needle Thoracostomy due to falling oxygen saturation levels. The Thoracostomy was successful but failed to raise Vos' oxygen saturation levels.

Vos did not make any statements while in transport. NBFD Medic 62 arrived at WMCSA at approximately 9:03 p.m., at which time care of Vos was relinquished to the on duty trauma surgeon at WMCSA. Upon arrival, Vos was unconscious and had no pulse.

Upon taking over care of Vos from the Nbfd paramedics, the on duty trauma surgeon resuscitated Vos and administered blood products and saline via IV lines. The attending trauma surgeon performed a Thoracotomy on Vos to gain access to his organs, and upon doing so he located a hole in Vos' heart and numerous holes in his lungs. The on duty trauma surgeon transferred Vos into an operating room for surgery, and additionally discovered two holes in Vos' liver, one in his colon, and one in his diaphragm. Vos' condition continually deteriorated as a result of his wounds. At 10:18 p.m., Vos was declared dead by the attending trauma surgeon.

Post-Shooting, Voluntary Statement of NBPd Officer Richard Henry

The majority of Officer Henry's statement is featured in the Factual Summary above. The following paragraphs highlight some of the pertinent factors regarding Officer Henry's state of mind throughout the incident.

Officer Henry gave a voluntary, consensual statement to OCDA investigators on June 3, 2014. According to Officer Henry, upon his initial arrival at the 7-Eleven he observed Vos yelling in the direction of Officer Kresge. Officer Henry observed that Vos was very agitated and angry. Officer Henry recalled that at one point Vos was yelling at Officer Kresge to shoot him (Vos). Henry also observed Vos was making a shooting motion towards Officer Kresge while Vos' arm was wrapped up in a sweatshirt or cloth. Officer Henry's initial thoughts were that Vos' behavior was consistent with someone who had been using methamphetamine for "seven days straight."

According to Officer Henry, he was aware that Vos went inside the room behind the checkout counter of the 7-Eleven and closed the door. Henry observed Vos exit the room and come back into view of the officers. As Vos ran towards the officers outside the 7-Eleven, Officer Henry was able to see Vos' upper torso area and Vos' elevated hand with a metal object in it "protruding out of his hand a good six or eight inches." Officer Henry heard the police public address system from his vehicle being used by another officer who was commanding Vos to "drop the weapon."

Officer Henry stated that he initially believed the metal object in Vos' hand to be scissors, since Officer Henry had earlier heard over dispatch that Vos had scissors in his possession. According to Officer Henry, Vos was in a full-on sprint towards the officers positioned outside of the 7-Eleven's open glass doors. According to Officer Henry, at this point he feared for the safety of his fellow officers if Vos was able to reach their position, and when Vos was about three or four feet from exiting through the 7-Eleven's entrance doors, Officer Henry made the decision to fire his weapon. Officer Henry believed Vos would have killed or attempted to kill his partners upon exiting the doors. Officer Henry stated that Vos fell within three feet of the officers and that Vos would have reached the officers in less than a second from the time he (Officer Henry) fired his weapon.

Post-Shooting, Voluntary Statement of NBPd Officer Nathan Farris

The majority of Officer Farris' statement is featured in the Factual Summary above. The following paragraph highlights some of the pertinent factors regarding Officer Farris' state of mind throughout the incident.

Officer Farris gave a voluntary, consensual statement to OCDA investigators on July 10, 2014. According to Officer Farris, while he was en route to the 7-Eleven after having been dispatched to respond there, he heard Officer Kresge broadcast over the radio that the subject (Vos) was inside of the store and motioning to Kresge as if he had a gun. Officer Kresge advised Officer Farris and the other officers en route that the male subject had gone inside the 7-Eleven's back room. After arriving at the 7-Eleven, Officer Farris also learned that Vos had assaulted someone with scissors.

When Officer Farris arrived on scene he initially took the 40 millimeter less lethal launcher from his vehicle. According to Officer Farris, prior to taking a position behind one of the vehicles, he noticed that Officer Shen had already retrieved a 40 millimeter less lethal launcher. At that point Officer Farris returned to his vehicle and retrieved the AR-15 patrol rifle, and relinquished the 40 millimeter less lethal launcher because he knew that Officer Shen already had that weapon system. Officer Farris then took up a position behind the passenger door of one of the NBPd police vehicles.

According to Officer Farris, he first saw the upper torso of Vos once Vos exited the back room of the 7-Eleven. Officer Farris stated that Vos exited the back room and ran "very rapidly," "bobbing and weaving from side to side" in an erratic manner. At this point, Officer Farris became concerned for his safety and the safety of the officers he was with.

After Vos went around the counter, Officer Farris stated that Vos ran towards the doors of the 7-Eleven. Officer Farris noticed a metallic object in Vos' left hand, which Vos held over his head in what Officer Farris considered a "stabbing position." Once Vos, who was running at full sprint towards the officers, came within approximately four feet from reaching the front doors, and 10 feet from the officers, Officer Farris feared that Vos was going to kill him or his partner, and Officer Farris made the decision to fire his AR-15.

Post-Shooting, Voluntary Statement of NBPD Officer Andrew Shen

Officer Andrew Shen gave a voluntary, consensual statement to OCDA investigators on June 3, 2014.

According to Officer Shen, when his unit was en route to the 7-Eleven he heard over the police radio about a male subject simulating that he had a potential weapon like a handgun and that the subject may be mentally unstable. Officer Shen eventually positioned himself behind the driver's side door of a police vehicle with a 40 millimeter less lethal weapon.

Officer Shen stated that he heard other officers shout that the subject had come out of the back room of the 7-Eleven, and when he looked up he saw Vos sprinting at his position. According to Officer Shen, Vos had his hand up and was making a "stabbing motion" with his hand while he was running towards officers. Officer Shen stated that he felt threatened and viewed Vos' actions to be a danger to officers, so he fired the 40 millimeter less lethal projectile at Vos when Vos was about half way to the doors of the 7-Eleven.

According to Officer Shen, he aimed for Vos' lower abdomen when he fired the less lethal projectile as he had been trained to do. Officer Shen stated that he put the weapon's sights onto Vos' abdomen before firing it. Officer Shen stated he did not see if the projectile struck Vos. According to Officer Shen, the shot didn't affect Vos and Vos just kept advancing. Officer Shen heard the other officers open fire after he had fired his 40 millimeter less lethal projectile at Vos, but before Vos reached the 7-Eleven entrance doors.

According to Officer Shen, it would not have been possible to reload a second 40 millimeter less lethal round into his weapon and fire it at Vos before Vos would have closed the distance between himself and the officers.

Post-Shooting, Voluntary Statement of NBPD Officer Dave Kresge

Officer Dave Kresge gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

Officer Kresge was the first officer to arrive on scene at the 7-Eleven responding to the 911 call. According to Officer Kresge, one of the store clerks told him that Vos had chased them with scissors. Officer Kresge stated that he observed Vos was "visibly agitated" inside of the store and screaming. Kresge observed Vos making hand motions "trying to rouse [Kresge] into believing that he (Vos) had a gun." Vos put his right hand behind his back and hid his left hand against his chest. Vos also wrapped his hand in a jacket or shirt and held his hand in the air. Officer Kresge stated that he believed Vos was trying to get Kresge to shoot him (Vos). Officer Kresge stated that he broadcasted this updated information on the police radio. As other NBPD officers responded, Vos closed himself inside a room behind the cash registers.

According to Officer Kresge, two NBPD vehicles were placed in a "V" position facing the 7-Eleven to create cover for police officers. Officer Kresge took up a position of cover behind the passenger side door of the NBPD police vehicle facing northwest. Approximately eight to 10 minutes later, Vos reemerged. Officer Kresge stated that Vos was running "full stride" around the front counter and towards the officers outside the front door. According to Officer Kresge, he heard another officer yell "Shoot!" when Vos was approximately 10 to 12 feet from the door. Officer Kresge pointed his handgun at Vos but did not fire because he was not "on target" when he heard "Shoot." Officer Kresge was unable to see Vos' hands from his position.

Voluntary Statement of 7-Eleven Store Clerk John Doe #4

7-Eleven store clerk John Doe #4 gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

According to John Doe #4, at the time of the incident he was working with another clerk, John Doe #5. According to John Doe #4, he was assisting a female customer with her purchase when Vos entered the store. Vos rushed into the store, ducked between two aisles, and appeared to be hiding from someone. As Vos hid, he told John Doe #4 that someone was trying to kill him. Approximately five to 10 seconds later, another customer walked in and went directly to the refrigerated section of the store. Vos removed a screwdriver from a display shelf and approached the customer and yelled, "Who's going to try to kill me?" and some other "bad words." According to John Doe #4, Vos continued to swear at and threaten the customer. The customer eventually left the store to get away from Vos.

John Doe #4 stated that Vos exited and then re-entered the 7-Eleven one or two minutes later, and continued to yell unintelligibly. The other store clerk on duty called 911 for help. Fearing that Vos may attempt to harm him or a customer, John Doe #4 stated that he went into the back room of the store to look for something he could defend himself with. While he was in the back room, Vos entered the area behind the employee counter and continually asked the other store clerk "Where's the gun, where's the gun?" while searching through the shelves and cabinets behind the counter. John Doe #4 stated that Vos then grabbed a pair of scissors, approximately 12 inches in length, from one of the shelves.

According to John Doe #4, Vos then grabbed the other store clerk from behind. John Doe #4 feared Vos would stab his coworker with the scissors, so he tried to disarm Vos of the scissors. John Doe #4 received an approximately two to three inch laceration on the palm of his hand during the ensuing struggle for the scissors, and was unable to gain control of the scissors. John Doe #4 stated that as Vos continued to pace around the store, Vos put his hands behind his head and yelled "Shoot me, shoot me!" Vos then again jumped over the employee counter and again yelled, "Where's the gun, where's the gun?"

Both store clerks exited the 7-Eleven once officers arrived on scene.

Voluntary Statement of 7-Eleven Store Clerk John Doe #5

7-Eleven store clerk John Doe #5 gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

According to John Doe #5, he was sitting in his car in the store parking lot while on his break when he observed Vos walk inside the front door of the 7-Eleven while talking to himself. According to John Doe #5, a few seconds later he heard someone scream and then heard the sound of something being thrown and hitting a car in the parking lot. John Doe #5 walked into the store, and Vos said, "Shoot me," and Vos also said to John Doe #5 and his co-worker, "I know you have a gun." John Doe #5 called 911 and told the police dispatcher that Vos was in his store screaming and was "out of his mind or on drugs."

John Doe #5 stated that as soon as he hung up the phone with 911, Vos jumped over the counter, grabbed a pair of scissors, and raised his arm up with the scissors. John Doe #5 believed that Vos attempted to stab him. His coworker John Doe #4 cut his hand when he and Vos struggled for control of the scissors. Vos then walked outside, put his hands behind his head, and yelled, "Shoot me, shoot me!" Vos walked back in the store, again asked where they kept their guns, and searched around the shelves behind the counter. At one point, Vos put his arm around John Doe #5's neck. John Doe #5 pulled Vos' arm off from him. Both store clerks exited the 7-Eleven while Vos appeared distracted. John Doe #5 looked back and saw Vos go into the store office and close the door.

Voluntary Statement of Civilian Witness John Doe #3

Civilian witness John Doe #3 gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

According to John Doe #3, he stopped by the 7-Eleven to purchase something to drink around 8:10 p.m. on May 29, 2014. As he stood in line at the front counter, he saw Vos enter the store through the front doors. John Doe #3 stated that Vos kept looking out of the window of the store as if someone was following him, and that Vos appeared agitated, paranoid,

and used profanity while in the store. When another customer entered the store and walked down an aisle towards Vos' location, Vos lunged at that customer with an unknown object in his hand. The other customer jumped back and left the store. Vos then noticed John Doe #3, and yelled to him, "That's the mother f***** right there!" John Doe #3 stated that at this time he noticed Vos was holding a screwdriver in his hand. John Doe #3 became frightened and ran to the front doors. John Doe #3 ran outside and noticed Vos was running close behind him. John Doe #3 stated that he was afraid Vos was going to stab him to death with the screwdriver. As the two men ran into the parking lot, Vos threw the screwdriver at John Doe #3, but it missed and hit a parked car behind him. Vos then walked back towards the store.

7-Eleven Surveillance Video

The 7-Eleven store equipment was recording surveillance video at the time of this incident from several different cameras. Some of the video also contains audio from the incident. A review of the videos shows that while inside the 7-Eleven, Vos yelled several phrases that were caught by the audio, such as: "Kill me already," "I got a strap," "I got a gun right here," "You want me dead," "Waste me," "I've got scissors," "Where's the gun," "Kill me already, please," "I'm holding a hostage," "Shoot me in the head already," and again "Kill me already."

EVIDENCE COLLECTED

The following items were collected from the scene:

- One Colt AR-15A#, serial # LBD020095, one cartridge, head stamp FC11223 REM, with a loaded magazine in the weapon;
- One Colt AR-15A#, serial # LBD001239, one cartridge, head stamp FC11223 REM, with a loaded magazine in the weapon;
- One expended less lethal projectile;
- One Defense Laboratory 40mm, less lethal weapon launcher, serial #D23877;
- Four .223 cartridge cases, head stamp "FC11223REM";
- One cartridge case, head stamp "**38*";
- Two metal merchandise display hooks;
- One T-shirt, navy blue with white writing on the front, cut in half, apparently saturated with blood;
- Four .223 cartridge cases, head stamp "FC11223REM";
- One skate board, black top, brown wood bottom, orange wheels;
- Three apparent bullet fragments; and
- Clothing consisting of one black and gray cloth sweat shirt and one black jacket.

EVIDENCE ANALYSIS

Firearm Examination

A forensic scientist at the Orange County Sheriff's Department Crime Lab examined the following items of evidence:

1. Colt Model AR-15A3 rifle, .223 Remington caliber, serial number LBD020095 with two magazines.
2. Colt Model AR-15A3 rifle, .223 Remington caliber, serial number LBD001239 with two magazines.
3. Eight cartridge cases and four apparent bullet fragments gathered at the scene.
4. Four bullets and one apparent bullet fragment from Vos' autopsy.

A firearms examination and comparison of all of the firearms related to this investigation yielded the following results:

Both semiautomatic Colt rifles used by Officers Henry and Farris fired without malfunction. The eight cartridge cases collected at the scene were all Federal brand .223 Remington caliber. The cartridge cases were microscopically compared to test fired cartridge cases from the two Colt rifles used by Officers Henry and Farris. All eight cartridge cases were determined to have been fired from these two rifles. The bullet fragment recovered during the autopsy from the spine of Vos was determined to have been fired from the officers' rifles. The bullets recovered during the autopsy from the right side, right hip, and left side back of Vos were also forensically consistent as having been fired from the officers' rifles.

Autopsy Findings

On June 3, 2014, Dr. Etoi Davenport, a forensic pathologist with the Orange County Coroner's Office, conducted a post-mortem examination of Vos. Dr. Davenport determined that Vos suffered four gunshot entry wounds to the left shoulder, left chest, right chest area and to the left thigh. In addition, Dr. Davenport also observed a red circular bruise on the center of Vos' chest located near the lower portion of the sternum that was 3/4 to 7/8 of an inch in diameter. This injury is consistent with the result of being hit by the less lethal projectile fired by Officer Shen. At the conclusion of the autopsy, Dr. Davenport concluded that Vos' cause of death was multiple gunshot wounds.

Toxicology Report

A toxicology exam was conducted on Vos' postmortem blood to test for alcohol, prescription drugs, and common drugs of abuse. No alcohol was detected and the following results and interpretations were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.104 ± 0.007 mg/L
Methamphetamine	Postmortem Blood	1.63 ± 0.11 mg/L

Vos' Prior Criminal History

Vos had a State of California Criminal History Record that revealed arrest for the following violations:

- Violation of Health and Safety Code section 11350(a) (Possession of Controlled Substance: Cocaine) in 2011.
- Violation of Health and Safety Code section 11350(a) (Possession of Controlled Substance: Heroin); Penal Code section 21810 (Possession of Metal Knuckles); and Health and Safety Code section 11364.1(a) (Possession of Controlled Substance Paraphernalia) in 2012.

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 lawfully 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. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a, case law, and criminal jury instructions.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when "necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest." The felony must be 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* (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 "resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person."

California Penal Code Section 835a provides that any "peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace 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."

In addition, Penal Code section 834a states 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, it is the duty of such person to 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 permit a person to defend himself/herself from attack if: 1) the person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury, 2) the person reasonably believed the immediate use of force was necessary to defend against that danger, and 3) the person used no more force than was reasonably necessary to defend against that danger.

The law as detailed in CALCRIM 3470 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 reasonably 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’s precedent that limits the right of a police officer to use deadly force. 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, clarified subsequently 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 rapidly evolving.” (*Id.* at 396-397). Thus, 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).

In *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, the Fourth District Court of Appeal stated 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 defendant 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.’” (*Id.* at 527). The *Brown* court held that the “question is whether a peace officer’s actions were objectively reasonable based on the facts and circumstances confronting the peace officer. The test is highly deferential to the police officer’s need to protect himself and others.” (*Id.*). The court elaborated that “we must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Id.* at 528). Therefore, 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.” (*Id.*).

LEGAL ANALYSIS

The issue is whether the conduct of Officers Henry and Farris on the night of May 29, 2014, was criminally culpable and without justification. In order to lawfully charge either Officer Henry or Officer Farris with a crime, the prosecution must prove beyond a reasonable doubt that the officers did not act in lawful self-defense or defense of others. Considering all the available evidence of this incident, the prosecution cannot prove beyond a reasonable doubt that Officers Henry and Farris did not act in lawful self-defense. Therefore, no criminal charges are warranted. More specifically, all the available evidence in this case clearly proves that Officers Henry and Farris acted lawfully and were justified in shooting Vos.

Pursuant to Penal Code section 196, the shooting was clearly committed during the lawful attempt to arrest the resistant Vos for a felony which reasonably created a fear of death or serious bodily harm to the officers. Officers Henry and Farris had probable cause to believe that Vos had committed a felony violation of Penal Code section 245(a)(1) (Assault with a Deadly Weapon) because they observed Vos running towards them, holding a metal object in his raised left hand in a stabbing position. Prior to shooting, the Officers knew Vos had ignored commands to drop the weapon. The Officers waited to shoot Vos until Vos was less than 10 feet from the Officers. Officer Henry reasonably believed Vos would cover the remaining distance in less than one second. Given these circumstances, both Officers stated they feared Vos would kill or attempt to kill an Officer. Both officers were justified and reasonable in so believing based on the totality of the circumstances.

Pursuant to Penal Code Section 197, the use of deadly force by Officers Henry and Farris was justifiable because the officers were "resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person." Both Officers Henry and Farris stated that at the time they shot they believed Vos would kill or attempt to kill an officer. Vos also was engaged in the commission of a felony which reasonably created a fear of death or serious bodily harm to the officers because Vos was running towards the officers while holding a metal object in his raised left hand in a stabbing position.

Officers Henry and Farris acted within the lawful performance of their duties as a peace officer pursuant to Penal Code Section 835a. Both Officers had reasonable cause to believe that Vos committed a public offense and were entitled to use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Both Officers knew Vos had cut a store employee with scissors and observed Vos running towards them, holding a metal object in his raised left hand in a stabbing position. The level of force used by Officers Henry and Farris was legally justifiable pursuant to Penal Code sections 196 and 197 as detailed above, and the separate analysis listed below. Officers Henry and Farris had no duty to retreat or desist despite Vos' resistance or threatened resistance. Furthermore, under Penal Code section 835a, neither Officer shall be deemed an aggressor nor lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Officers Henry's and Farris' actions were also legally justified under CALCRIM 3470. Both Officers reasonably believed that they or another officer were in imminent danger of suffering bodily injury because they observed Vos running towards them, holding a metal object in his raised left hand, in a stabbing position. The two officers also knew Vos had ignored commands to drop the weapon. At the time they fired, the Officers reasonably believed the immediate use of force was necessary to defend against that danger because Vos had ignored commands to drop the weapon, was running at them, and was within 10 feet of the officers. Officer Henry believed Vos would cover the remaining distance in less than one second. This belief is reasonable and justifiable under the circumstances.

Case law provides a framework for the analysis of the circumstances when determining whether the Officers used no more force than was reasonably necessary to defend against the danger Vos posed. 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." (*Garner*, supra, 471 U.S. at p. 3). An officer's right to use force is to be analyzed under the Fourth Amendment's "objective reasonableness" standard in which 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." (*Graham*, supra, 490 U.S. 386 at 396-397). Thus, 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). At the time they fired, both Officers Henry and Farris stated they believed Vos would kill or attempt to kill an officer. They observed that Vos had a metal object in his hand and was charging towards them. While the Officers did not have confirmation at the time they fired what exactly was in Vos' hand, a person's right of self-defense is the same whether the danger is real or reasonably apparent. (*Jackson*, supra, 233 Cal.App.2d at pp. 641-642). Officers Henry and Farris knew that Vos had already assaulted a store clerk with scissors, motioned to police officers as if he had a gun, and ignored commands to drop the weapon. It also objectively appeared as if Vos was not stopped by a less lethal 40mm projectile.

The *Brown* court stated that the “test is highly deferential to the police officer’s need to protect himself and others.” (*Brown*, supra, 171 Cal.App.4th at p. 527). The *Brown* court elaborated that we “must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” [Citation omitted].” (*Id.* at 528). Given the totality of the circumstances presented to Officers Henry and Farris in an uncertain and rapidly evolving situation, the Officers made a split second decision to fire rather than risk the lives of the police officers present. The Officers observed an armed suspect charging towards them, who had ignored commands, and who appeared to be unaffected by a less lethal projectile. The Officers waited to fire until Vos reached what Officer Henry believed was one second away from the officers. Indeed, Vos’ body fell outside the 7-Eleven doors at the front of the NBPd vehicles where officers were standing. The *Brown* court’s teaching that “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,” directly applies to the facts of this incident described above. Officers Henry and Farris confronted and armed Vos, running at them with his hand raised in a stabbing position within 10 feet of the officers’ position. Given these facts and a legal framework that is highly deferential to a police officer’s need to protect himself and others, the prosecution cannot prove beyond a reasonable doubt that the officers’ split-second judgment about the level of force used was objectively unreasonable. The facts of this case clearly prove that Officers Henry and Farris did not commit a crime, on the contrary, they were lawfully discharging their duty when they were confronted by an unstable individual who had just attacked innocent civilians, and was now attacking the officers while ignoring their lawful commands.

In order for Officer Henry or Officer Farris 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 the Officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Vos. A review of all the available evidence collected in this investigation makes such a conclusion unreasonable and contrary to the facts.

CONCLUSION

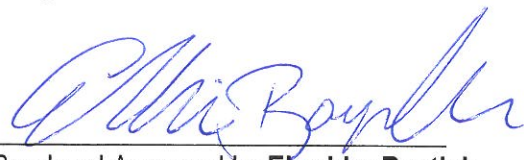
Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Officer Henry or Officer Farris. There is significant and substantial evidence Officers Henry and Farris’ actions were legally justified under the circumstances.

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

Respectfully submitted,



Jason Baez
Deputy District Attorney
Gang Unit



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