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October 31, 2014

Dan Hughes
Fullerton Police Department
237 W. Commonwealth
Fullerton, CA 92832

Re: Officer Involved Shooting on June 12, 2013
Fatal Incident involving Simon Halley Buckles
District Attorney Investigations Case # 13-014
Fullerton Police Department DR # 2013-35076
Orange County Crime Laboratory Case # 13-48216

Dear Chief Hughes,

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 Fullerton Police Department (FPD) Corporal Mike Bova. Simon Halley Buckles, 27 years of age, and a resident of Fullerton, died as a result of his injuries. The incident occurred in the City of Fullerton on June 12, 2013.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the June 12, 2013, fatal officer-involved shooting of Simon Halley Buckles. 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 FPD 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 June 12, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed 11 witnesses and obtained and reviewed the following: FPD reports, audio recordings, dispatch and radio traffic recordings; Orange County Sheriff Crime Lab (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 Buckles; 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 impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of FPD officers or personnel, specifically Corporal Bova. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

INVESTIGATIVE METHODOLOGY

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

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. 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.

FACTS

Simon Halley Buckles was employed as a courier for a clothing company located on East Valencia Drive, Fullerton. The clothing company is owned by Jane Doe #1 and her family.

On June 12, 2013, Buckles came to Jane Doe #1's office and began yelling at her. Buckles was upset because he had been informed that the company was requiring him to use a company vehicle for making deliveries. Buckles was angry at having to use a company vehicle because he would no longer receive an extra \$15 a day as reimbursement for using his own vehicle for delivers.

While in Jane Doe #1's office, Buckles continued to yell at her and threatened to injure her daughter. When Jane Doe #1 tried to leave the office, Buckles blocked her path to the door. Jane Doe #1 yelled for help and told some nearby office employees to call the police. Buckles then grabbed Jane Doe #1 by the neck and began to strangle her, saying that he was going to kill her. Jane Doe #2 ran into the office and attempted to stop Buckles by repeatedly striking him on his body and head, but given Buckles' size, her strikes had little effect. Another employee, Jane Doe # 3, called 911. Buckles stopped strangling Jane Doe #1, saying "this is taking too long." Buckles then left the clothing company. While Buckles was leaving, he also threatened Jane Doe #2 by saying something to the effect of, "You're next."

At approximately 6:12 p.m., FPD Corporals Bova and Jose Torres were dispatched to the clothing company in response to the 911 call made by Jane Doe #3, in reference to the assault that had just occurred. Corporals Bova and Torres interviewed Jane Doe #1, Jane Doe #2, and Jane Doe #3.

While at the scene, John Doe #1, who is a co-worker and Jane Doe #1's brother-in-law, arrived at the business with his wife. While the officers were still inside the business, John Doe 1 showed them a recent post that Buckles had posted on Facebook. The following is a copy of the text of that Facebook post:

Well, I'm afraid this is the end. [Jane Doe 1], my boss, for some reason thought it right to cut about \$350 from my monthly paycheck (about all I spend for anything not rent or gas). I tried to discuss it with her, but she wouldn't budge. I argued, but she wouldn't budge. Since she has a history of doing petty things and giving me paychecks, I had enough and tried to choke the life from her body. She didn't budge! Anyways, I apologize to all the people I inconvenienced. However, if it's any consolation, this was very inevitable; I'm surprised I didn't do this as a teenager.

While at the scene, Corporal Torres obtained a phone number for Buckles and called him. When Corporal Torres spoke with Buckles, he informed Buckles that he should return to the scene so the officers could get his side of the story. Fullerton Forensic Specialist (FFS) Leticia Hernandez arrived and took photos of Jane Doe #1's injuries. FPD Dispatch advised Corporal Torres that Buckles had a local address. Additionally, FPD Dispatch notified the officers that Buckles had a firearm registered to him.

At approximately 7:07 p.m., Buckles returned to the area. At the time, Corporal Torres and FFS Hernandez had just exited the clothing company offices. Corporal Bova was outside speaking with John Doe #1. Corporal Bova saw an individual walking towards his location and asked John Doe #1 if the individual was Buckles. John Doe #1 said, "yes."

As Buckles approached, Corporal Bova saw him reach into his shorts pocket and remove a Ruger .44 caliber revolver as he was walking towards the FPD officers. Corporal Torres yelled for Buckles to stop but he did not comply. Instead, Buckles raised the revolver and Corporal Bova fired three rounds from his service pistol. One round struck Buckles in the chest. After being shot, Buckles crouched down and placed the barrel of his revolver inside his mouth and pulled the trigger, causing a self-inflicted gunshot wound to the back of the head.

Buckles was pronounced dead at the scene by Fullerton Fire Department Paramedics.

Voluntary, Consensual Statement of Corporal Mike Bova

Corporal Bova gave a voluntary, consensual statement to the OCDA on Aug. 16, 2013. The following is a summary of the statement Corporal Bova gave regarding the shooting:

While outside the business and talking with John Doe #1, Corporal Bova saw a large white male come around the corner of the building and walk towards him. Corporal Bova asked John Doe #1, "Is that him?" and John Doe #1 responded, "That's him." John Doe #1 seemed nervous and turned as if to run. At this point, Buckles appeared startled when he saw Corporal Bova, but continued walking toward him. While walking toward him, Buckles started frantically digging with his right hand in his right front shorts pocket. Corporal Bova described Buckles as walking directly towards him, "with purpose." This caused Corporal Bova to un-holster his handgun. Corporal Bova then saw Buckles remove a chrome firearm from his pocket and raise it. Corporal Bova fired two or three shots at Buckles out of fear for his safety and the safety of other people around him. Corporal Bova saw Buckles go down in a crouching position and then spin down temporarily out of Bova's view. Within a second or two, Buckles stood up. Corporal Bova then saw blood gushing from the left side of his body before Buckles lay down on his back. Corporal Bova did not hear any other gunshots and yelled out to Corporal Torres that Buckles was down. Due to vehicles being in the area, Corporals Bova and Torres approached Buckles' body from the far side because they could not see the upper half of his body or the firearm. When they cleared the vehicles, Corporal Bova saw that Buckles was bleeding severely from the head with the firearm still in his right hand.

Voluntary, Consensual Statement of Corporal Jose Torres

Corporal Torres gave a voluntary, consensual statement to the OCDA on June 12, 2013. The following is a summary of the statement Corporal Torres gave regarding the shooting:

Corporal Torres stated that he was escorting FFS Hernandez back to her car when he saw an individual who matched the description of Buckles. This individual came around the northeast corner of the building and then started walking towards Corporal Bova, with his right hand in his right front pocket. Corporal Torres yelled out, something like "There he is," and ordered the individual to put his hands up. The man, later identified as Buckles, took a gun out of his front right pocket. At

this point, Corporal Torres grabbed FFS Hernandez, placed her behind him, and moved around his vehicle. Corporal Torres momentarily lost line-of-sight of Buckles because there was something, possibly a dumpster, in his way. Corporal Torres did not actually see any shots fired, but he heard two or three shots and Corporal Bova calling out that the suspect was "down." Corporal Torres walked around his car and saw that Buckles was down with what appeared to be a headshot wound and a chest wound. The gun was in Buckles' right hand with his finger still on the trigger.

Voluntary, Consensual Statement of Forensic Specialist Leticia Hernandez

FFS Leticia Hernandez gave a voluntary, consensual statement to the OCDA on June 12, 2013. The following is a summary of the statement FFS Hernandez gave regarding the shooting:

FFS Hernandez and Corporal Torres walked toward her FPD crime scene investigation vehicle parked east of the entrance to the business in the parking lot. Corporal Bova was in front of the clothing company talking with employees. While FFS Hernandez and Corporal Torres were talking, Corporal Torres looked north and suddenly began giving verbal commands to an individual. FFS Hernandez observed this individual, later identified as Buckles, armed with a chrome handgun in his right hand. FFS Hernandez heard Corporal Torres order Buckles to stop while informing Corporal Bova that Buckles had returned to the scene and that he was armed with a gun. Buckles did not comply with Corporal Torres' commands and continued walking toward them while raising the firearm in their direction. FFS Hernandez did not hear Buckles say or make any comments, and she also did not hear Corporal Bova say anything. Corporal Torres stepped in front of FFS Hernandez, obstructing her view of Buckles. Next, FFS Hernandez heard three gunshots, which she believed were fired by the individual coming towards them. FFS Hernandez ducked behind a parked vehicle for protection and to check if she had been shot. FFS Hernandez did not see who was responsible for the gunshots. FFS Hernandez next heard Corporals Bova and Torres request assistance from additional officers and medical assistance via their police radios.

Post-Shooting, Voluntary Interviews with Civilian Witnesses

Voluntary Statement of John Doe

The following is a summary of the statement John Doe gave regarding the shooting:

John Doe was outside speaking to Corporal Bova when he saw Buckles come around the corner of the building and start walking towards his location. John Doe indicated to Corporal Bova that the man was Buckles. John Doe heard one of the police officers say something to the effect of "Stand down." John Doe thought he then heard Buckles say something to the effect of "it's okay," and then he saw Buckles draw a firearm from his body. John Doe saw Buckles point the handgun under his chin or in his mouth, but John Doe was unsure if he heard a gunshot. John Doe next saw Buckles' head "choked back" and Buckles dropped to the ground. John Doe then went inside the business to comfort the employees. John Doe stated that he did not see or hear the officers fire their handguns.

EVIDENCE COLLECTED AT THE SCENE

PHYSICAL EVIDENCE COLLECTED FROM THE SCENE

- Three Winchester .40 Smith & Wesson cartridge casings
- Photograph of apparent bullet strike
- Photograph of missing paint

EVIDENCE COLLECTED FROM CORPORAL MIKE BOVA

- Sig Sauer, Model P229, .40 caliber, semi-automatic pistol
- One Winchester 40 S&W cartridge from the pistol chamber
- Nine Winchester 40 S&W caliber cartridges from the 12 cartridge capacity magazine in Corporal Bova's pistol
- Two magazines from Corporal Bova's duty belt, each containing 12 cartridges
- Photographs of Corporal Bova in duty uniform

EVIDENCE COLLECTED FROM BUCKLES

- Clothing
- Tennis shoes
- Wireframe glasses
- Black Samsung flip phone
- Blue Lyon Management Group key ring and keys
- Pocket knife in a black leather holder
- Black leather tri-fold wallet
- Ruger, Red Hawk, six shot, .44 Remington Magnum caliber revolver
- Five Starline Brand .44 caliber Smith & Wesson cartridges and one expended Starline Brand .44 caliber Smith & Wesson cartridge case from inside the cylinder of the Ruger Red Hawk revolver listed above

EVIDENCE COLLECTED FROM BUCKLES' HOME

- One tan 7.5" Bianchi Ruger Redhawk revolver holster
- One box containing 50 .44 Caliber Remington Magnum cartridges
- One box containing Ten X Central .44 Caliber Smith & Wesson cartridges (26) cartridge casings (18), and 6 empty slots

BUCKLES' AUTOPSY

On June 14, 2013, the post mortem examination of Buckles was conducted at the Orange County Sheriff-Coroner Forensic Science Center. The autopsy was conducted by Dr. Aruna Singhania, a Forensic Pathologist with the Orange County Coroner's Office. During the autopsy, OCCL Forensic Scientist Jeanne Putiner collected a bullet from Buckles' right back.

Following the autopsy, Dr. Singhania concluded that Buckles died as a result of two gunshot wounds: one entering the head from the roof of the mouth that perforated the brain and the other projectile entering the right chest, above the right nipple, that perforated the right lung.

EVIDENCE ANALYSIS

On or about June 19, 2013, OCCL Forensic Scientist Robert L. Reekers conducted an examination of the two firearms collected from Corporal Bova and Buckles, the three cartridge casings collected at the scene, and the bullet recovered during the autopsy of Buckles. The following are the results of that examination:

- The Sig Sauer pistol fired without malfunction in both single and double actions.
- The Ruger revolver fired without malfunction in both single and double actions.
- The three cartridges collected from the scene were determined to have been fired from the Sig Sauer pistol belonging to Corporal Bova.
- The bullet from the right back of Buckles was determined to have been fired from the Sig Sauer pistol belonging to Corporal Bova.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; attempted murder [Penal Code Section 664/187]; 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. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197, and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to

believe that the person has committed a felony. *People v. Kilvington* (1894) 104 Cal. 86, 89. The felony must involve violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.

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

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony to use reasonable force to effectuate 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 effectuate the arrest or to prevent escape or to overcome resistance." As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or the threat of violence. The court in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." *Kortum v. Alkire, supra*, 69 Cal. App. 3d at 333.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest fear and conviction that he or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. *People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.

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

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and evolving." *Id.* at 397. Thus, the Court cautioned that "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396.

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of Corporal Bova with Buckles.

LEGAL ANALYSIS

Prior to Buckles returning to the clothing company on East Valencia Drive, Fullerton, Corporals Torres and Bova learned that Buckles had a violent confrontation with Jane Doe #1 and Jane Doe #2 and he threatened to kill them. In addition, Corporals Bova and Torres also learned that Buckles owned a firearm. When Buckles ultimately did return, multiple witnesses observed him walking toward Corporal Bova, while ignoring Corporal Torres' commands to stop. As Buckles continued to advance on Corporal Bova, he drew a firearm from his right pocket and raised it. At this time, Corporal Bova was in actual and reasonable fear for his safety and the safety of the others around him. This fear was clearly grounded in facts that were known to Corporal Bova. Buckles' actions were such that a reasonable person would have had the honest fear and conviction that he or another person was about to suffer bodily injury. Additionally, given the totality of the circumstances, there was more than probable cause to believe that Buckles posed a significant threat of death or serious bodily injury to Corporal Bova or to others. Thus, Corporal Bova had the right to act in self-defense, and his actions in drawing his weapon and firing at Buckles were justifiable and necessary under the circumstances.

In order for Corporal Bova to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that Corporal Bova did not act in reasonable and justifiable self-defense or defense of others when he shot at Buckles. As should be apparent from the above-described legal analysis and legal conclusion, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Corporal Bova to use the force that he did in this circumstance. There is significant competent evidence that Corporal Bova acted reasonably under the circumstances and that he was justified in shooting Buckles.

CONCLUSION

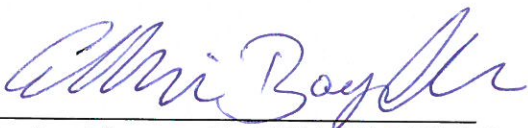
Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Corporal Bova, and there is substantial evidence that Corporal Bova's actions were reasonable and justified under the circumstances when he shot Simon Halley Buckles on June 12, 2013.

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



ERIC SCARBROUGH

Senior Deputy District Attorney
Homicide Unit



Read and Approved by **EBRAHIM BAYTIEH**

Acting Assistant District Attorney
Head of Court – Special Prosecutions Unit