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October 2, 2012

Chief of Police John Welter
Anaheim Police Department
425 S. Harbor Boulevard
Anaheim, CA 92805

Re: Officer Involved Shooting on August, 16, 2011
Fatal Incident involving David Raya
District Attorney Investigations Case # SA 11-014
Anaheim Police Department DR # 11-124255
Orange County Crime Laboratory Case FR # 11-51247

Dear Chief Welter,

Please accept this letter detailing the Orange County District Attorney's (OCD A) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Investigator Bruce Linn. David Raya, a 23-year-old Fullerton resident, died as a result of his injuries. The incident occurred in the City of Anaheim on Aug. 16, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCD A's investigation of the Aug. 16, 2011, fatal officer-involved shooting of Raya. The letter includes an overview of the OCD A'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 APD officer involved in the shooting. The format of this document was developed by the OCD A, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Aug. 16, 2011, Investigators from the OCD A Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators conducted over 90 interviews, and obtained and reviewed the following: APD reports, audio recordings and dispatch and radio traffic recordings; Orange County Crime Lab (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical reports and photographs related to the injuries sustained by Raya; criminal history records related to Raya including prior criminal history records and prior incident reports; the personnel records of Investigator Linn; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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 APD officers or personnel, specifically Investigator Linn. 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 or killed 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. Prosecutors 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.

A critical part of the OCDA investigation is to seek a statement from the officers involved in the shooting. All APD officers involved in this incident, including Investigator Linn, voluntarily spoke with OCDASAU Investigators.

FACTS

Synopsis

On Aug. 16, 2011, APD's Crime Task Force (CTF) was assigned to look for Raya, who was a wanted parolee on parole for assault with a deadly weapon (a firearm). The CTF had received information from investigators and patrol officers from APD, police reports and informants that Raya was on the run, stressed, hungry and sending lookouts to watch for undercover police vehicles. CTF members were informed by a CTF investigator that Raya was a documented Anaheim Hispanic criminal street gang member and was known to be armed and dangerous. CTF members know Raya's gang to be a violent criminal street gang that frequents the area of Guinida Lane and Iris Street in Anaheim.

CTF members were further informed that Raya had recently been involved in at least two vehicle thefts, and witnesses in those cases told officers that Raya was armed with three firearms, including .22, .25 and .45 caliber handguns. CTF investigators were also in receipt of a wanted flyer on Raya, dated July 29, 2011, prepared by the APD Gang Unit. This flyer advised that Raya was said to be an armed parolee-at-large with a warrant for his arrest.

Information was developed that Raya's girlfriend was on probation and subject to "search and seizure," meaning her person and property may be searched at any time by law enforcement. CTF also had information that Raya was frequenting her address. On Aug, 16, 2011, CTF began surveillance of this address at 12:30 p.m. At approximately 1:38 p.m., CTF attempted to conduct a probation search on Raya's girlfriend's residence on West Guinida Lane in Anaheim. APD's helicopter was used for aerial reconnaissance.

While nine officers approached the front door of the apartment, Investigators Linn and Chad Meyer covered the back, east side of the apartment complex, positioned at the southeast corner of the complex which leads to a small easement between apartment complexes. CTF Sergeant Michael Haggerty knocked on the fence in front of the apartment and announced in a loud voice, "Anaheim Police Department, probation search, anyone inside come out." After waiting five seconds, he again yelled, "Anaheim Police Department."

Seconds later, Raya jumped out of the apartment window into the easement, approximately 4 to 5 feet from Investigator Linn. Raya was wearing dark shorts, a light colored t-shirt and a black baseball cap. Investigator Linn yelled, "Police, get on the ground." Raya looked directly at Investigators Linn and Meyer then ran northbound towards a block wall.

Investigators Linn and Meyer ran after Raya. Investigator Linn yelled, "Put your hands up. Put your hands up." Investigator Linn saw Raya reaching for his waistband, causing Investigator Linn to fear for his safety and the safety of Investigator Meyer. Investigator Linn aimed his gun at Raya and fired three rounds, from approximately 7 to 10 feet from Raya. The shots appeared to have no effect on Raya, as he kept running and jumped over the block wall. Investigator Linn reached the block wall with Investigator Meyer still behind him. Investigator Linn saw Raya continuing to reach into his waistband so he fired two more rounds at Raya from approximately 10 to 12 feet away. Raya went over the iron fence and fell to the ground. No weapons were located at the scene, but a glass methamphetamine pipe was located inside the waistband of Raya's shorts, in the small of his back.

Anaheim Fire Department was escorted into the scene to treat Raya. He was then transported to the University of California, Irvine Medical Center with two gunshot wounds to the back. Despite full life-saving efforts by the medical team, Raya died at 3:23 p.m. A subsequent search of the room from which Raya had fled produced a pill bottle on top of the bed. Inside the pill bottle was marijuana and methamphetamine. A lighter was located on the floor at the foot of the bed.

Interview of Raya's Girlfriend

Raya's girlfriend was interviewed and confirmed that Raya was in her apartment when police arrived on Aug. 16, 2011. She and Raya heard a helicopter and a police radio from the east side of the building. She then heard a police officer say something similar to "probation search." Raya then jumped out of the east-facing bedroom window. She heard officers tell Raya, "Stop, stop right there." She saw two officers running after Raya saying, "Stop," and it appeared they were pointing their guns at Raya. She herself told Raya to stop, but he kept running. She thought Raya at some point was holding up his shorts, with both hands, at his front pockets. She saw Raya jump a cinder block wall and then heard approximately four gunshots. She saw Raya fall, but did not see who fired the shots.

Neighborhood Canvass Interviews

OCDAs Investigators interviewed 80 potential witnesses from the neighborhood regarding the shooting. No witnesses were found who reported seeing the shooting. However, six witnesses who live in the apartment complex where the shooting occurred reported that Raya was ordered to stop prior to shots being fired. Witness #1 heard two voices yell, "Get down, get down," before shots were fired. Witness #2 heard someone yell, "Stop,

stop," before hearing gunshots. Witness #3 heard people running below her window, then several voices yelling, "Stop, stop," before hearing shots fired. Witness #4 heard running, then several voices shout, "Stop, stop," before hearing gunfire. Witness #5 heard someone yell, "Put your hands up," before hearing shots fired. Witness #6 heard a male voice yell, "Get down, get down."

Voluntary Statement of Investigator Linn

On Aug. 18, 2011, Investigator Linn voluntarily spoke with OCDA Investigators regarding the incident. Investigator Linn said he had received multiple law enforcement emails over the prior month regarding Raya. These emails indicated Raya was a gang member, a parolee at large, and was armed and dangerous. He also knew that Raya had, on two prior occasions, fled from police while armed. Investigator Linn was made aware that Raya had access to three different handguns and had prior convictions for possessing a firearm and assault with a deadly weapon. On Aug. 16, 2011, he received an updated email that indicated Raya also had access to a shotgun and that he was on the run, stressed, and sending lookouts to identify undercover police cars. Also on Aug. 16, 2011, Investigator Linn viewed a wanted flyer that said Raya was on parole for assault with a deadly weapon on a victim he shot at close range.

Investigator Linn said that on Aug. 16, 2011, he and other officers went to the West Guinida Lane apartment of Raya's girlfriend, where Raya was reported to be hiding. Investigator Linn was wearing tan work shorts and black work boots. Over his green work shirt he wore a police raid vest with five different police labels on the front and two on the back. The plan was to surround the apartment and announce their intention to conduct a probation search. If there was no answer, they planned to wait for Special Weapons and Tactics to arrive and assist.

Investigator Linn said he and Investigator Meyer went to the rear of the apartment through an access gate into an easement. They had difficulty seeing the rear bedroom window from their initial location. Due of the helicopter noise, he couldn't hear the announcement made by Sergeant Haggerty, but saw officers start getting into position. As he and Investigator Meyer got to within 5 to 6 feet from the rear bedroom window, he noticed the window was open and a thin, black sheet was covering it. When he looked back, the sheet had been pulled back and he saw a puff of smoke coming out the window. He believed the smoke to be from a methamphetamine pipe.

Investigator Linn turned to Investigator Meyer, who was behind him, to tell him about the smoke. Then Raya came out of the window, 4 to 5 feet from Investigators Linn and Meyer. Investigator Linn pointed his rifle at Raya and said, "Police, get on the ground." Investigator Linn said that Raya looked at him and then ran north through the easement to a block wall. Investigator Linn chased Raya, with Investigator Meyer behind him. The easement was only four or five feet across, so the officers had to proceed single-file.

Investigator Linn said that about 15 feet from the block wall, Raya turned and looked back at Investigator Linn and reached back into his rear waistband with his left hand. As he did so, Raya cleared his shirt out of the way and his hand disappeared up to his wrist. Investigator Linn yelled at Raya to get his hands up, but Raya continued to dig into his rear waistband. At that time, Investigator Linn believed Raya was reaching for a firearm. Investigator Linn said this caused him to fear for his life and that of Investigator Meyer.

Investigator Linn said that because of the move by Raya toward his waistband, and because there was no place in the narrow easement for the police to take cover, Investigator Linn fired three rounds at Raya from 7 to 10 feet away. However, Raya continued up and over the block wall, apparently unaffected by the gunshots. As Raya went over the wall and continued running towards an iron fence, Investigator Linn said that Raya continued to reach into his rear waistband with his left hand. Investigator Linn then fired two more rounds at Raya from 10 to 12 feet away, after which Raya climbed over the iron fence and fell to the ground.

Investigator Linn recounted for investigators that he personally wears gym shorts and can carry his wallet, badge and gun completely concealed within the gym shorts. Investigator Linn said that the way Raya cleared his shirt from the area of his waistband reminded Investigator Linn of how he was trained at the range to clear his shirt to retrieve his concealed weapon. Investigator Linn could clearly see that Raya was not in the act of pulling up his shorts, but instead was reaching into his waistband in an effort to retrieve something, which Investigator Linn believed was a firearm.

Voluntary Statement of Investigator Meyer

The only eyewitness to the shooting was Investigator Linn's partner, Investigator Meyer. Investigator Meyer voluntarily provided a statement to OCDA Investigators on Aug. 16, 2011. Investigator Meyer said that he and Investigator Linn went through a gate to the rear of the West Guinida Lane apartment belonging to Raya's girlfriend. Two other officers arrived to assist them, but because the area was so small and narrow, the other officers went to a different area of the complex while he and Investigator Linn stayed. At the time, Investigator Meyer was wearing gray shorts and brown boots. Over his gray shirt he wore a ballistic vest with a police badge on the front and back.

Investigators Meyer and Linn couldn't see the rear window of the apartment because it was recessed. As they got closer to the window, they saw it was open and had no screen. At that point, Investigator Meyer was standing behind Investigator Linn because there wasn't enough room to stand next to each other. Investigator Meyer heard over the radio that officers were going to knock on the door of the apartment. Then he saw a plume of smoke come out the bedroom window, followed about five seconds later by Raya coming out the window. He and Investigator Linn both yelled, "Police, stop." Raya looked at Investigator Linn and started running northbound. As Investigator Meyer and Investigator Linn chased Raya, Investigator Linn yelled, "Police, stop, let me see your hands."

As Raya got to within 15 feet of the wall at the end of the alley, he turned and looked back at the officers. Raya's left hand went under his shirt and into his rear waistband. One of the officers then yelled, "Let me see your hands." At that point, Investigator Meyer believed Raya was reaching for a firearm. He then heard Investigator Linn fire three shots from no more than 15 feet away from Raya. Investigator Meyer could not use his gun because Investigator Linn was in front of him and in the line of fire. Raya jumped over the wall and kept running towards a fence. As he and Investigator Linn got to the fence, he heard Investigator Linn fire two to three more shots and saw Raya down on the ground, still with his hand in his rear waistband. At that time, Investigator Meyer saw two other officers run up and handcuff Raya.

Autopsy

On Aug. 17, 2011, Dr. Anthony Juguilon, a forensic pathologist, conducted a post-mortem examination on Raya at the Orange County Sheriff-Coroner Forensic Science Center. Following an extensive external and internal examination, Dr. Juguilon concluded that the cause of death was two penetrating gunshot wounds to the rear torso area, resulting in massive blood loss.

EVIDENCE ANALYSIS

Toxicology

A toxicology exam was conducted on Raya's post-mortem blood and controlled substances Amphetamine, Methamphetamine, Tetrahydrocannabinol, and Tetrahydrocannabinol Carboxy-Acid were detected. Laudanosine was also indicated, but a confirmation analysis was not conducted.

Weapons and Projectile Examination

The OCCL examined and test-fired Investigator Linn's Colt Sporter semi-auto rifle. The rifle was test-fired without malfunction. The five cartridge cases collected from the scene were compared to the test-fired cartridge cases from Investigator Linn's Colt Rifle and were determined to have been fired in the Colt Rifle.

The projectiles collected at the autopsy from Raya's body were heavily damaged and not suitable for comparison.

Glass Pipe Examination

The glass pipe found in Raya's waistband was swabbed for DNA. A low level mixture of DNA from at least two people was obtained, using the Identifiler Plus system. Assuming only two contributors, and a single major contributor to this mixture, a major contributor profile was deduced. That DNA profile was compared to DNA that was extracted from a portion of the muscle standard from Raya. Raya was not excluded as the major contributor. The frequency of choosing an individual, at random, who could be a possible major contributor to the DNA mixture obtained from this glass pipe is more rare than 1 in 600,000 unrelated individuals.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officer involved in the shooting include murder (PC 187), attempted murder (PC 664/187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict any officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications apply for the officers' actions. People v. Banks (1977) 67 Cal.App.3d 379, 383-84. Several justifications may apply; they are provided by Penal Code sections 196, 197, and 835a.

California Penal Code section 196 states 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 use of deadly force by any person is justifiable when used in self-defense or in defense of others. The law of self-defense, as summarized in California Criminal Jury Instruction 505, 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 death or great bodily injury, to act in self-defense or defense of others. The person's right of self-defense is the same whether the danger is real or merely apparent. The evidence comprising the appearance of danger may include information about the background of an individual who appears to pose a danger, including information that the individual has threatened or harmed others in the past (provided such information is the type which a reasonable person would rely upon).

California Penal Code section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." As with Penal Code section 196, section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or

the threat of violence. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333. The Kortum court 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.

The above justifications must be interpreted in light of U.S. 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. The U.S. 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.” Tennessee v. Garner (1985) 471 U.S. 1, 3.

However, any determination about the reasonableness of force used by an officer “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.” Thus, “[t]he 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.” Graham v. Connor (1989) 490 U.S. 386, 396.

LEGAL ANALYSIS

The issue is whether Investigator Linn may be charged with a crime. If his actions were justifiable as lawful self-defense or defense of others, then criminal charges will not be sustained. Based upon the investigation in this case and the uncontroverted evidence supplied by Investigator Linn, it is the conclusion of the OCDA that the evidence does not support a finding of criminal culpability on the part of Investigator Linn.

This conclusion is based upon the following evidence: Investigator Linn had received information that Raya was a gang member, he was a parolee-at-large with a warrant for his arrest, he was on parole for assault with a firearm, and he was said to be armed and dangerous with a firearm. Investigator Linn was also made aware that in two recent contacts with police, Raya was believed to have had a firearm but fled before he could be apprehended.

Investigators Linn and Meyer made repeated commands to Raya to “stop,” which were ignored. As Raya ran from Investigators Linn and Meyer down a narrow footpath, Raya reached into his rear waistband, ignoring repeated commands to stop and show his hands. Raya’s actions, coupled with the fact the investigators were in an enclosed location where there was no place to take cover, caused Investigator Linn to fear for his life and that of Investigator Meyer. Investigator Linn then fired three shots at Raya. These shots seemingly did not affect Raya, as he continued to run and continued to reach into his rear waistband. Investigator Linn could reasonably conclude this to be a continuing threat and fired two more shots at Raya.

Investigator Linn’s statements as to the events that transpired on Aug. 16, 2011, are reasonable, not contradicted by other evidence, and are corroborated by Investigator Meyer, canvass witnesses, and evidence at the scene (specifically that a glass pipe was in Raya’s waistband where he had been reaching as he ran).

Raya’s death was the direct result of his movements towards his rear waistband and failure to obey commands to stop and show his hands. In hindsight, it is reasonable to believe that Raya was reaching into his waistband in order to retrieve a methamphetamine pipe, perhaps to discard it so that police would not find it in his possession. However, given the information Investigator Linn knew of Raya’s criminal history and his propensity to be armed, Investigator Linn reasonably interpreted Raya’s movement toward his waistband as a move for a gun.

Consequently, Investigator Linn's belief that he and Investigator Meyer were in imminent danger of being shot by Raya was reasonable under the circumstances.

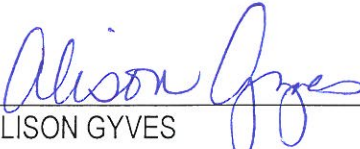
In summary, the facts known to Investigator Linn justified his fear, and thus justified the shooting of Raya under the legal doctrines of self-defense and defense-of-others, as he had probable cause to believe that Raya posed a significant threat of death or serious bodily injury to Investigator Meyer and him.

Additionally, Raya was a documented gang member, who had previously been convicted of a violent felony. Investigator Linn had reliable information that Raya was carrying a firearm, a felony that poses a threat of harm to others, and that Raya was intent on not being taken into custody by law enforcement. Thus, as Raya fled from police who had ordered him to stop, it would not be unreasonable for a person in Investigator Linn's position to conclude that Raya posed a threat of violence to others if Investigator Linn were not able to immediately stop him from fleeing. Consequently, there is significant evidence that Investigator Linn's shooting was justified under Penal Code sections 196 and 835a, as well.


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 Investigator Linn, and there is significant evidence that the officer's actions were reasonable and justified under the circumstances when he shot Raya on Aug. 16, 2011.

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



ALISON GYVES
Senior Deputy District Attorney



Read and Approved by DAN WAGNER
Assistant District Attorney
Head of Homicide Unit