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# DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

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BRANCH COURT OPERATIONS

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ECONOMIC CRIMES

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BUREAU OF INVESTIGATION

**LISA BOHAN - JOHNSTON**  
DIRECTOR  
ADMINISTRATIVE SERVICES

**SUSAN KANG SCHROEDER**  
CHIEF OF STAFF

May 15, 2012

Chief Daniel S. Llorens  
Fountain Valley Police Department  
10200 Slater Avenue  
Fountain Valley, CA 92708-4736

Re: Officer Involved Shooting on December 28, 2010  
Non-Fatal Incident involving David Dinh  
District Attorney Case # 11SA015  
District Attorney Investigations Case # S.A. 10-027  
Fountain Valley Police Department DR # 10-06315  
Orange County Crime Laboratory Case # FR-10-56246

Dear Chief Llorens,

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 Fountain Valley Police Department (FVPD) Officer Richard Nilos, Detective Kham Vang, Detective Pat Estes and Sergeant Kurt Ulrich. David Dinh, 17, Fountain Valley, survived his injuries. The incident occurred in the courtyard of an apartment complex in the City of Fountain Valley on Dec. 28, 2010.

## **OVERVIEW**

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Dec. 28, 2010, non-fatal officer-involved shooting of Dinh. 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 FVPD 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 Dec. 28, 2010, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed 69 witnesses and obtained and reviewed the following: FVPD reports, audio recordings and dispatch and radio traffic recordings; Fountain Valley Fire Department (FVFD) incident reports; Orange County Sheriff Crime Lab (OCCL) reports including latent print, officer processing and firearms examination reports; forensic alcohol examination and toxicology reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Dinh; criminal history records related to Dinh including

prior criminal history records and prior incident reports; the personnel records of Officer Nilos, Detectives Vang and Estes and Sergeant Ulrich; 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 FVPD officers or personnel, specifically Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

## **METHODOLOGY OF INVESTIGATION**

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. 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 and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

## **FACTS**

### **Background of Defendant and Events Leading Up to the Shooting**

On Dec. 28, 2010, at approximately 8:42 a.m., FVPD Officers Anthony Spangler and Marco Avila contacted Dinh regarding an incident. They were investigating a report of a subject taking mail out of mailboxes and tampering with a utility truck at another location in Fountain Valley. Officer Avila questioned Dinh at the scene and subsequently released Dinh to his father, Joe Dinh. Dinh was brought home and sent to his room but then crawled out of his bedroom window and left the home.

Two hours later, at approximately 10:27 a.m., FVPD dispatch received a 911 call from John Doe, who resides in an upstairs unit in a Fountain Valley apartment complex. Doe explained to the dispatcher that an Asian male had stormed into his apartment, pointed a handgun at him, ordered him onto the floor of his bedroom, and threatened to kill him. While the intruder was in another room of the apartment, Doe had managed to make his escape from the apartment, flee downstairs and call 911. Doe told the dispatcher, and later to officers at the scene, that the suspect was still in his apartment. He also disclosed that he kept numerous guns and rifles in his bedroom that were unloaded and locked in a large, glass case. He initially stated that he kept the ammunition in his downstairs garage and believed there was none in the apartment, but later stated that there was some ammunition hidden in a box in his closet.

As for the handgun used by the suspect, Doe informed the initial responding officers that he thought the handgun used by the intruder may be an airsoft gun or a replica firearm that shoots pellets, but that he could not be certain and

did not want to risk being shot. Doe complied with the suspect until he had the opportunity to escape from the apartment. A visibly-shaken Doe explained to police that, based on the appearance of the handgun and the suspect's threats, he was in fear for his life while in the apartment with the intruder.

In response to Doe's 911 call, FVPD Officers Aaron Knight, Nilos, Ulrich, Leslie Roberts, Tony Luce, Dave Steele, and Robert Sweaza responded to the scene to assist Vang, Cortes, Estes, Avila and Spangler.

Officer Avila contacted Doe to get additional information about the robbery. Doe told Officer Avila that he had been inside his residence when an unknown Asian male, later identified as Dinh, entered through the closed, unlocked, front door. Dinh entered the apartment and pointed a black handgun at Doe while charging toward him and ordering him to the ground. Doe complied and Dinh began looking through Doe's belongings. At one point, Doe noticed Dinh was not looking at him so he began to get up. Dinh came over to Doe, pushed the handgun against Doe's upper back, and once again ordered him to the ground while asking him several times, "Do you want to f\*\*\*\*\* die?"

When Dinh walked into another room and continued looking through Doe's belongings, Doe ran out of the apartment through the front door. Dinh followed Doe and yelled at Doe to "Get back here," but Dinh did not exit the apartment.

Doe told Officer Avila that he owns several firearms, which were inside of his apartment. Based upon the description provided by Doe, Officer Avila believed Dinh, whom he had contacted approximately two hours earlier, may be the subject who entered Doe's apartment. Avila telephoned Dinh's father to inquire as to Dinh's whereabouts and was told that he had sneaked out through his bedroom window.

Officer Avila updated the other responding officers via police radio that Dinh was a suspect and possibly armed with an airsoft gun. Officer Avila also knew Dinh had carried airsoft guns on prior occasions. Officer Avila believed the handgun Doe described may have been an airsoft gun.

Doe's second-story apartment on the east side of the complex, with access to the front door via an outside staircase, is accessed from the courtyard.

Officer Nilos positioned himself behind a tree in the southwest portion of the courtyard with a view of the walkway area and staircase to Doe's apartment. Sergeant Ulrich deployed behind the wooden fence of an apartment's porch southwest of Doe's apartment. Detective Cortes, Officer Luce, Sergeant Roberts and Sergeant Sweaza deployed on the west side walkway to Doe's apartment. Detectives Estes and Vang deployed on the walkway leading to neighboring apartments to the east of Doe's. Officers Knight, Spangler, Avila and Steele deployed on perimeter positions outside of the apartment complex and did not witness the subsequent shooting.

While officers were formulating and deploying their tactical plan, Dinh remained inside Doe's apartment, where he armed himself with several of Doe's firearms. Dinh located a "Norinco MAK-90 Sporter" semiautomatic rifle, which is similar to an AK-47, chambered in 7.62 x 39mm caliber. The rifle was unloaded, but Dinh located ammunition for the rifle, loaded its five-round magazine to capacity, placed it into the rifle, chambered a round, removed the magazine, loaded another round into the magazine, and placed the magazine back into the rifle. Dinh also located some .22 caliber long rifle ammunition and unsuccessfully tried to load the magazine of a .22 caliber handgun he had found in the residence.

Once the officers had deployed into their positions, Detective Estes yelled out from his location on the nearby walkway, identifying himself as a FVPD officer and calling for Dinh. Detective Estes called out three times asking Dinh to come out of the apartment and turn himself in to police. Approximately 30 seconds later, Dinh walked out of Doe's apartment into the walkway at the bottom of the staircase holding the semiautomatic Norinco Mak .90 Sporter (AK-47) type rifle in hand.

Dinh observed Officer Nilos, who was wearing a full FVPD motor patrol officer uniform, across the courtyard. Officer Nilos moved toward Dinh while shouting commands at him to put down the gun. Dinh admitted to have heard something to the effect of, "We know you have an airsoft gun, drop it." Dinh moved the rifle's safety selector switch to the "off" position, shouldered it, looked down the barrel, and used the sights to aim at Officer Nilos. From the staircase, Dinh shot one time at Officer Nilos, and then moved toward him and continued to shoot at him until he ran out of ammunition. As Dinh was shooting at him, Officer Nilos observed bullets hitting the wrought iron pool gate, ground, and the tree behind which he had initially been taking cover. Officer Nilos retreated and fired once at Dinh with his Remington .223 caliber rifle.

Detectives Vang and Estes observed Dinh's rifle barrel protrude from the corner wall leading toward the staircase to Doe's apartment and then heard a gunshot. Based upon the sound of the shot and their observation of the rifle's barrel, Detectives Estes and Vang believed Dinh was armed with a real firearm. Detectives Estes and Vang both observed Dinh run toward Officer Nilos and then toward a second group of officers as he continued to shoot and hold his weapon in a ready position. In response, Detectives Estes and Vang both shot at Dinh.

Sergeant Ulrich heard Officer Nilos yell "rifle" or "long gun" and, "Drop the gun," followed by the sound of a single gunshot. Sergeant Ulrich heard four or five additional shots and noted two different sounding gunshots. Sergeant Ulrich believed Officer Nilos had been fired upon by somebody in the area of Doe's apartment and was returning fire from his position of cover at the south end of the courtyard. Sergeant Ulrich observed Dinh, rifle in hand, in the courtyard area in front of Doe's apartment. He observed Dinh moving westward toward the area where Officers Cortes, Luce, Roberts and Sweaza had deployed. Seeing this, Sergeant Ulrich fired his shotgun at Dinh three times.

Dinh dropped his rifle and fell to the ground as a result of being struck by police gunfire. After Dinh was handcuffed and it was determined he did not possess additional weapons, Sergeant Ulrich called for paramedics. The officers observed apparent gunshot wounds to Dinh's arms, legs, and upper torso. Dinh was conscious and breathing.

At approximately 11:06 a.m., officers advised dispatch that an officer-involved shooting had occurred.

### **Voluntary, Consensual Statement of Officer Nilos Regarding the Incident**

Officer Nilos gave a voluntary, consensual statement to the OCDA on Dec. 28, 2010, at approximately 3:30 p.m.

At the time of the shooting incident, Officer Nilos, 5-year veteran of FVPD, was assigned as a traffic motorcycle officer and had been assigned to that duty for the past three years. His normal shift was from 6:00 a.m. to 4:00 p.m., Tuesday through Friday. He had the prior day off as his regularly scheduled day off and had approximately nine hours of sleep prior to reporting for duty the morning of Dec. 28, 2010.

On the morning of Dec. 28, 2010, Officer Nilos was driving a police-issued motorcycle and was dressed in his traffic motorcycle officer full dress-blue patrol uniform with FVPD patches, police badge and a full Sam Brown-type utility belt which included a holstered Sig Sauer P-220 .45 caliber duty pistol, and a two-capacity extra ammunition magazine pouch.

At approximately 10:30 a.m., Officer Nilos was one of the first officers to respond to the scene to assist other officers regarding a "man with a gun – interrupted residential burglary" call that had gone out over FVPD dispatch. Officer Nilos dismounted his motorcycle and armed himself with his department-issued Remington 12-gauge shotgun. He positioned himself in the courtyard complex across from the apartment in which the suspect was believed to be, and

where he could provide cover for other officers and detectives arriving on the scene and have a visual of the apartment's exit.

Officer Nilos remained at his vantage point to provide cover while the other arriving detectives, sergeants and officers determined a plan of action for getting Dinh to come out of the apartment and surrender into custody. He learned that there were several rifles and guns in the victim's house and that the suspect might possibly be a young man who may have some psychological problems whom FVPD officers had contacted earlier that day.

Approximately 40 minutes later, Officer Nilos switched his shotgun with Sergeant Ulrich's Remington .223 pump action long rifle, a better weapon than his shotgun with which to provide cover due to the distance across the courtyard. Sergeant Ulrich armed himself with the shotgun and took his position along with several other officers flanking the apartment.

After identifying himself as "Fountain Valley Police," Detective Estes yelled commands for Dinh to come out of the apartment and surrender. Shortly after the commands were repeated numerous times, Dinh, dressed in black, came down the stairs and made eye contact with Officer Nilos and other officers in the vicinity while holding up a long rifle against his shoulder with his elbows tucked in and the rifle butt stock held against his cheekbone. Based on Officer Nilos' experience and training in both the military and law enforcement, he believed Dinh was making eye contact with him and the other officers for the purpose of targeting them with his weapon.

Officer Nilos yelled out several times, identified the suspect as being dressed in a black shirt, holding a gun which was possibly an airsoft gun, and then specifically described the weapon as a long rifle. As Officer Nilos shouted this initial warning, he advanced from his cover behind the tree toward the suspect and aimed his own rifle at the suspect. From the distance of his vantage point in the courtyard, Officer Nilos could not tell whether the rifle in the suspect's hands was an airsoft gun or a real weapon. As Officer Nilos advanced, Dinh retreated back to the stairway.

Dinh suddenly re-emerged into the courtyard, targeting his rifle at Officer Nilos and advancing toward him. Fearing for his life, Officer Nilos yelled three times for the suspect to "Put the gun down!" Dinh continued advancing toward Officer Nilos, pointed his weapon directly at him, and fired his rifle at Officer Nilos two times. Officer Nilos heard the sound of the two shots, saw the muzzle flashes from the fired weapon, and saw the second shot hit the wrought-iron pool gate nearby. He recognized that Dinh's weapon was a loaded, rapid-fire, semi-automatic rifle.

Although Officer Nilos feared for his life and considered the suspect as posing a threat, he had refrained from firing on Dinh up to this point because he had been informed of Dinh's age and he was unsure whether Dinh's weapon was real or an airsoft gun. Officer Nilos also had concern about the risk of harm to the possible civilian occupants inside that apartment.

When Officer Nilos realized the gunfire was real and saw Dinh move into position behind a solid wall, Officer Nilos fired a shot back at Dinh, believing that Dinh was actively seeking to target and/or kill and shoot him with his rifle.

When Dinh disappeared momentarily, Officer Nilos retreated behind the oak tree for cover to place a new round of ammunition in his firearm. As he ran with his back to Dinh and attempted to take cover behind the tree, the first round hit the ground to Officer Nilos' left and a second round hit the tree he was running to get behind, exploding off the bark. Officer Nilos also observed a round hit the cement nearby.

As Officer Nilos got behind the tree and turned toward the suspect, he saw Dinh get up and aim his rifle toward Sergeant Ulrich and Roberts and Officer Luce. Officer Nilos believed that Dinh was going to shoot and kill Sergeant Ulrich and other officers in the area. Officer Nilos began to advance on Dinh and observed Sergeant Ulrich shoot his shotgun at Dinh. Dinh did not react to the first shot by Sergeant Ulrich and, after the second shot, Dinh still had his

weapon raised to his shoulder and trained on Sergeant Ulrich. After the third shot fired by Sergeant Ulrich, Dinh finally fell to the ground.

Officer Nilos went to where Dinh was lying on the ground immediately after he was down to provide cover for the other officers as they handcuffed and took him into custody. Even after being shot, Dinh did not fully comply with the commands of the officers, initially raising only one hand and continuing to reach for his waistband area, even after he was handcuffed.

### **Voluntary, Consensual Statement of Detective Vang Regarding the Incident**

Detective Vang, 7-year FVPD veteran, gave a voluntary, consensual statement to the OCDA on Dec. 28, 2010, at approximately 5:15 p.m.

He was assigned as a detective in the Special Investigations Unit and had been assigned to that duty for over three years. His normal shift was from 12:00 p.m. to 10:00 p.m., Tuesday through Friday. He had the prior day off as his regularly scheduled day off, and had approximately eight and a half hours of sleep prior to reporting for duty the morning of Dec. 28, 2010.

Between approximately 9:30 a.m. and 9:45 a.m., Sergeant Sweaza requested that Detective Vang assist other officers responding to a “man – possibly with a gun” call at an apartment complex.

Detective Vang responded to the scene in a FVPD-issued mini-van that was assigned to him. He was dressed in his typical plainclothes “uniform,” which included blue jeans, black tennis shoes, a grey t-shirt under a plaid, flannel shirt, and a black raid vest with the word “POLICE” clearly written in large, white letters on the back of the vest and a cloth police badge affixed to the front. He was armed with his department-issued firearm, a Glock Model 27, .40 caliber handgun, which he carried in an inside waistband holster concealed inside the right waistband area of his jeans. He carried a spare magazine of ammunition in the front, right-side pocket of his raid vest, and a taser in the left, bottom pocket of his vest. He also had a department-issued SIG P 220, .45 caliber handgun, which remained in the FVPD vehicle that was assigned to him for the duration of the incident.

Detective Vang learned through conversation with other responding officers and radio transmissions that Dinh was inside the apartment and armed with a handgun.

Detective Vang, Sergeant Roberts, Detective Estes, Detective Cortes, Officer Luce and Sergeant Ulrich deployed around the pool toward the apartment while Officer Nilos took position behind a tree in the courtyard to provide cover. Detectives Estes and Vang went to a stairwell of some adjacent apartments approximately 30 to 40 feet east of the stairwell to the apartment where Dinh was located. Sergeant Roberts and Officer Luce were near an alley located on the opposite side of Detectives Vang and Estes, west of Doe’s apartment. Detective Vang did not know the location of the other officers, including Sergeant Ulrich and Detective Cortes, but believed they were in the general vicinity of Sergeant Roberts and Officer Luce.

Detective Estes loudly yelled out two or three times for, “David,” identifying himself as FVPD, and asking that Dinh come out and talk with them.

After about 30 seconds, Detective Vang heard someone else shouting, “Rifle! Rifle! Put the gun down! Put the gun down!” Within five seconds of that shouting, Detective Vang, who had four years of extensive military weapons training, saw the barrel of an AK-47 emerge from beyond the walled-in stairwell area. Detective Vang reacted by putting out a radio call of a “man with an AK-47.” Approximately five seconds later, he observed the AK-47 barrel disappear out of view into the stairwell area and heard the sound of a gunshot about two seconds later. Detective

Vang saw the barrel re-emerge, pointed in the direction of Officer Nilos, and observed two muzzle flashes as the AK-47 was fired in the direction of Officer Nilos by Dinh.

When Detective Vang saw this, he immediately thought that Dinh was trying to shoot and kill Officer Nilos, innocent civilians in the area, or other responding officers. He then observed the suspect retreat back into the stairwell and heard additional shots. Detective Vang's concern for their safety was heightened by his knowledge of weapons and understanding that AK-47 ammunition could go through almost anything, including the officers' body armor.

Detective Vang was unable to see Officer Luce or Sergeant Roberts and believed that they had taken cover in the alley. Detective Vang observed Dinh emerge from the stairwell area holding his rifle in a firing position with his right elbow up, his weapon held up to his cheek, and pointing his AK-47 in the direction of Officer Luce, Sergeant Roberts and Detective Vang.

Detective Vang heard additional gunshots which he believed were being fired by Dinh, as Dinh was moving toward the other officers. Detective Vang believed that Dinh had already fired four to six rounds at Officer Nilos and that Dinh was going to kill the other officers. To save their lives, Detective Vang fired his weapon six to eight times after hearing Detective Estes fire a round at Dinh. He did not shout out any additional commands to Dinh because he believed it would give Dinh additional time to shoot and kill the officers.

Detective Vang observed Dinh go down once but then get back up with the rifle still in hand and raised in a firing position. Detective Vang fired a few more rounds and then observed Dinh fall into some bushes and drop his rifle. At that point, Detective Vang heard several officers repeatedly commanding Dinh to raise both hands and remove his hand from his waistband area. Dinh remained non-compliant, raising only one hand and continuing to reach for his waistband. He eventually raised both hands and was handcuffed by Detective Vang.

Paramedics were called and responded within minutes to the scene and provided medical aid to Dinh.

#### **Voluntary, Consensual Statement of Detective Estes Regarding the Incident**

Detective Estes gave a voluntary, consensual statement to the OCDA on Dec. 28, 2010, at approximately 5:50 p.m.

At the time of the shooting, Detective Estes had been employed as a FVPD officer for over 12 years and was also employed more than one year with the San Bernardino County Sheriff's Department. He was assigned as a detective in the Narcotics Unit, with his regular shift from Tuesday through Friday, with varying hours.

According to Detective Estes, on the morning of Dec. 28, 2010, he started his shift at 9:00 a.m. That morning, Sergeant Sweaza approached him at his desk and requested that he assist other officers responding to an "interrupted burglary in progress" call at a nearby apartment complex. Both he and Detective Vang left separately in their assigned vehicles to respond to the scene.

Detective Estes arrived on scene dressed in his typical plainclothes "uniform," which included blue jeans, tennis shoes, a brown, short-sleeved shirt, and a black raid vest with the word "POLICE" clearly written in large, white letters on the back of the vest and a cloth police badge affixed to the front. He was armed with his department-issued firearm, a Glock Model 26, .9mm caliber handgun, which he carried in a holster on his right hip. The handgun had a round in the chamber and 11 additional rounds in the magazine. He also carried a spare, 17-round, high capacity magazine on his belt.

When he arrived on the scene, Detective Estes parked his vehicle in an area on the outside perimeter of the apartment complex, near the vehicles of other responding officers. He saw several officers gathering in the street, including Sergeant Sweaza, Sergeant Roberts, Sergeant Ulrich, Detective Vang, Detective Cortes and Officer Nilos. Detective Estes overheard a discussion that the suspect might be the same man who had been involved in an earlier call that day. He also learned that the suspect was probably still inside the apartment and possibly armed with an airsoft gun or real weapons that belonged to the victim.

Two teams of officers were positioned around the apartment and giving verbal commands to Dinh to talk him into surrendering. Detective Estes and Detective Vang formed one team and positioned themselves by some apartments to the east of the apartment Dinh was in. At least three other officers positioned themselves near an alleyway area between some apartments to the west of Dinh's location. Officer Nilos remained positioned across the courtyard behind a tree to provide cover for the teams of officers.

Detective Estes gave several loud voice commands, identifying himself as FVPD, ordering Dinh to come out. After approximately one to two minutes with no response, Detective Estes observed a rifle protruding from the walled alcove area at the bottom of the stairwell of the apartment and immediately recognized the barrel as that of an AK-47 assault rifle. The barrel of the rifle was pulled back out of view two seconds later. This was not a weapon that FVPD was carrying during this incident.

Detective Estes heard Officer Nilos yelling about a "rifle" or "gun." Detective Estes and Detective Vang also acknowledged to each other that they had seen the gun barrel. Dinh then stepped into full view from behind the stairway alcove wall holding the rifle. Detective Estes heard a loud popping sound from the gun blast, saw a muzzle flash from Dinh's weapon, and felt the concussive shockwave from the round being fired by Dinh. He believed that Dinh was firing a real weapon in the direction of Officer Nilos. In addition to concern for Officer Nilos, Detective Estes was also concerned that the rounds being fired by Dinh might endanger other people around the complex who might get caught in the line of fire.

After firing these rounds, Detective Estes observed Dinh running out of the stairwell alcove toward the area where Detective Estes knew the other group of officers was located. Dinh had the butt of his rifle raised up to his cheek while he was running, and looking down the sight, taking aim, and appeared ready and actively wanting to shoot somebody.

Detective Estes' believed that Dinh was ready to shoot and kill whoever crossed his path and he feared that his fellow officers would be ambushed and killed unless he took action.

Detective Estes responded by firing at least 10 rounds at Dinh to save his colleagues. There was no initial reaction by Dinh to the shots, but he eventually fell to the ground and dropped his weapon.

Detective Estes heard several officers ordering Dinh repeatedly to "Show us your hands!" Detective Estes holstered his weapon, ran over to Dinh, grabbed his ankle, and pulled him out of the bushes to the sidewalk area to take him into custody. Although Dinh was no longer holding the rifle, the officers did not know if he had other weapons in his possession. Initially, Dinh was only partially compliant, raising only his right hand but keeping his left hand in the area of his waistband. The officers continued ordering him to raise both hands and he eventually complied and was handcuffed by Detective Vang.

### **Voluntary, Consensual Statement of Sergeant Ulrich Regarding the Incident**

Sergeant Ulrich gave a voluntary, consensual statement to the OCDA on Dec. 28, 2010, at approximately 4:50 p.m.

At the time of the shooting incident, Sergeant Ulrich had been employed by FVPD for 22 years, 21 years in a full-time capacity and one year as a reserve officer. He was assigned as a Traffic Sergeant and his normal shift was from 6:00 a.m. to 4:00 p.m., Monday through Thursday.

On Dec. 28, 2010, approximately between 10:45 a.m. and 11:00 a.m., Sergeant Ulrich, was called out to the scene to assist as a supervisor. Sergeant Ulrich was dressed in a standard FVPD patrol uniform, including standard identifying

FVPD patches and badges and he was carrying a holstered, department-issued, STI International Model 2011, .40 caliber sidearm. He also armed himself with his department-issued, Remington 7615, .223 caliber pump action rifle.

Sergeant Ulrich was briefed that the initial 911 call had involved someone fleeing from their residence after having been confronted by a suspect armed with a handgun. When he arrived at the apartment complex, Sergeant Ulrich parked his assigned FVPD patrol car in the perimeter area surrounding the complex, where he made contact with the victim and Officer Knight. Sergeant Ulrich interviewed the victim and learned that he had been confronted in his apartment by an unknown, armed suspect who had forced him to the ground at gunpoint. The victim had several firearms in his residence and the suspect had his own gun. Sergeant Ulrich put out on the radio the information that he had learned from the victim.

Sergeant Ulrich left the parking area and went to the apartment complex entrance, where he briefed Sergeant Roberts, Sergeant Sweaza, Detective Estes, Detective Kham, Detective Cortez, Officer Luce and Officer Nilos. He also learned that Dinh could be the same subject as from that earlier call. Sergeant Ulrich also spoke briefly with Dinh's father and learned that Dinh could be armed with an airsoft gun.

Sergeant Ulrich directed Dinh's father to remain in the parking area with another officer as he returned to the apartment courtyard area, where he saw the other officers moving into position around the courtyard and complex and Officer Nilos moving into position behind a large tree as cover. Sergeant Ulrich traded his patrol rifle for Officer Nilos' Remington 870 shotgun, as the rifle would be a better weapon for Nilos given the distance from which he had to provide cover for the other officers. Sergeant Ulrich moved into position in the courtyard, west of the apartment, in the vicinity of Officer Luce and Sergeant Roberts. He also observed the location across the courtyard of Detective Vang and Detective Estes.

He heard Officer Nilos yelling "rifle" or "long gun" a couple of times. He recalled hearing the words "airsoft gun" at least once, followed by the words "drop the gun" or "drop the rifle" or "drop the weapon" being shouted several times. He then heard shots.

Sergeant Ulrich began moving from his initial position of cover to a position where he could see the suspect. At that time, he saw Dinh on the ground level by the base of the stairs to the apartment, aiming an assault weapon in the direction where Sergeant Ulrich had last seen Officer Nilos by the tree. He recognized Dinh's weapon as an SKS, which is a variant of an AK-47 with a very distinctive look.

Sergeant Ulrich observed Dinh turn and quickly move northwest toward the area where Sergeant Ulrich had last seen Sergeant Roberts and Officer Luce positioned around a corner, where they would be "sitting ducks" if encountered by the armed Dinh. There had been no radio traffic during the incident updating the officers as to the suspect's physical location, so Sergeant Ulrich believed that, from their location, Sergeant Roberts and Officer Luce could not physically see Dinh and had no way of knowing that he was headed in their direction. Sergeant Ulrich also observed Dinh moving in the officers' direction with his assault rifle up in a low, ready-firing position. Dinh appeared to be looking for a target in the manner of an active shooter trying to kill someone.

Sergeant Ulrich knew that the surrounding bushes and fences being used as cover by the officers would not provide protection from the bullets being fired by Dinh. Sergeant Ulrich also knew that Sergeant Roberts and Officer Luce were in an enclosed alleyway around a blind corner, where Dinh was headed, putting the officers in extreme danger of being killed. Sergeant Ulrich believed that, if he did not take immediate action, the other officers would be killed or seriously injured by Dinh.

Sergeant Ulrich fired several rounds at Dinh. Dinh showed almost no reaction after Sergeant Ulrich fired the first round. After the second round was fired, Dinh immediately dropped to one knee, but got back up, still carrying his

assault rifle. After the third round was fired, Dinh dropped the rifle and fell into the bushes. As he fired his weapon, Sergeant Ulrich heard gunshots from Detective Vang and Detective Estes.

Once Dinh was in custody and the apartment was cleared, paramedics rendered assistance to Dinh.

### **Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood**

Several civilian witnesses were interviewed by OCDASAU Investigators. Most of Doe's neighbors first became aware of the situation in Doe's apartment and in the courtyard when they were awakened by or heard the gunshots exchanged between Dinh and the police. Several of the neighbors were not aware that they were hearing gunshots and mistook the sound for construction noise that had been going on in the complex during that time.

John Doe #2, lives in a first-floor apartment across the courtyard from Doe. His wife left the apartment while the police were outside staging their contact with Dinh. She returned to the apartment and told her husband that she was not going anywhere because there were about 10 police officers outside of their apartment. John Doe #2 went onto their patio, where he saw a motorcycle officer standing next to a tree just south of his apartment. He saw that officer holding a rifle standing next to two police detectives. He also saw two uniformed police officers and a couple of other detectives arrive on the scene. He observed the officers and detectives remain at that location for about 30 minutes. He described all of the officers as either wearing police uniforms or being plain clothes detectives wearing vests clearly marked "POLICE."

John Doe #2 watched the uniformed, motorcycle officer take cover in the area near the pool behind a tree, and the remaining officers and detectives position themselves in other locations, including northwest of Doe's apartment. Another of the detectives positioned himself between two of the apartments southeast of Doe's residence, and from that position made verbal contact with the suspect by yelling out, "David. Come on out. This is the Fountain Valley Police Department. We're all around. We don't want to come in after you. Let's do this reasonably. Come on out."

A few minutes later, John Doe #2 saw the motorcycle officer step forward and heard him begin shouting, "I see a barrel! I see two barrels! I see two weapons! I see two weapons!" The motorcycle officer then shouldered his own rifle and pointed it in the direction in which he was looking, yelling, "Put down your gun! Put down your gun!" At that time, John Doe #2 heard the "pop" of what sounded like an assault weapon firing once from the area by Doe's apartment.

John Doe #2 explained that he had grown up around guns and was familiar with their sounds and concussions when fired. He then saw the motorcycle officer return fire from his rifle one time and then "retreat" behind the tree. John Doe #2 emphasized in his statement that the motorcycle officer was **returning** fire. As the motorcycle officer then moved back behind the tree, John Doe #2 heard "assault rifle sounds," and observed someone shooting back at the officer as two to three bullets struck the ground where the motorcycle officer was standing.

John Doe #2 saw the motorcycle officer hiding behind the tree and believed the motorcycle officer may have returned fire with one to two more shots. After the gunfire stopped, he saw all of the officers suddenly move in the direction of Doe's apartment on the other side of the pool, yelling, "Hand off the weapon! Drop the weapon! Hand off the weapon! You've been shot once! Drop the weapon or you'll get shot again!" He observed one of the officers reach down, pull a rifle away from the area of the ground, and throw it into the grass. He then heard someone call for paramedics. At that point, several of the officers holstered their weapons and seemed to proceed in a business-like and calm manner.

In his statement, John Doe #2 emphasized that the shooting at the officer was done in an aggressive manner and has no doubt that the police officers acted appropriately in the situation, reiterating that they were not the instigators, but were defending themselves and the civilians in the area.

### **Dinh's Consensual, Voluntary, Pre-Miranda Statements of Events**

Once Dinh was initially stabilized by medical staff at the hospital, Officer Luce, who had accompanied Dinh with the paramedics to the hospital, interviewed Dinh out of concern that he might die in the trauma room due to his injuries. This interview took place on Dec. 28, 2010. At the time of the interview, Dinh's blood pressure had been stabilized and he was coherent and alert, although in pain as he had not yet been administered any pain medication.

Dinh stated that, while he was inside of the apartment, he heard someone calling out his name. He came out of the apartment with a gun and saw someone standing behind a tree at the other side of the courtyard. Dinh claimed that he felt threatened, so he began firing his weapon at the person. Dinh denied that he knew that the person he was firing at was a police officer, though he admitted that the person was wearing blue and black-colored clothing. According to Dinh, he believed that he was just shooting at a random citizen. Dinh then heard someone yelling about a gun as he was walking through the courtyard area and admitted to Officer Luce with a smile and a short laugh that the person was "probably" telling him to put his gun down.

When asked about what he had been doing in the apartment, Dinh said he thought he knew the man who lived at the apartment that he had broken into from school. When he went into the apartment, he saw a man who he did not know. He admitted that he pointed a gun at that male resident and ordered him to the ground. He later noticed that the male was running out of the apartment, but did not attempt to chase or capture him. Dinh stated that he had brought a BB-type handgun into the apartment but, once there, he had located approximately 12 to 15 guns. He picked an SKS rifle, which he loaded with five or six rounds, and carried that weapon out into the courtyard when he left the apartment.

On Dec. 29, 2010, an OCDASAU Investigator, accompanied by FVPD Detective Adam Hertenstein, conducted a follow-up interview of Dinh while he was in his hospital room, after he had been treated for his injuries. The interview began at approximately 8:25 a.m. Dinh was advised by the interviewing Investigators that he was not under arrest and did not have to speak with the officers. Dinh agreed to speak with the officers. Dinh's mother, who was with him at the hospital, requested to be present with Dinh during the interview. The interview was initially conducted by Detective Hertenstein. Dinh's initial account of the events leading up to his shooting, related while his mother was in the room, was as follows:

Dinh had gone to the apartment complex to visit a friend from school. The door to the apartment was unlocked, so he went inside because he was looking for someone to talk to. When he got inside, he noticed that the interior was different than he remembered and he encountered a "big, burly man," whom he had never seen before. The man ran into the bedroom. Dinh followed him and they talked. The man was alarmed that Dinh was in his apartment and fled. Dinh decided to stay in the apartment and use a laptop.

At some point, Dinh heard someone calling his name, saying that they knew he had an airsoft gun, and asking him to come out and talk about it. Even though he stated he did not have an airsoft gun and felt that what the officers were saying did not make sense, Dinh decided to exit the apartment. When he walked out, he saw someone standing behind a tree far away who yelled something at Dinh that he could not hear. Dinh admitted that he had identified the man behind the tree as a plainclothes police officer. He knew he was a plainclothes officer because of the authoritative manner in which he had yelled out to Dinh and ordered Dinh to "stop." Dinh said that, all of a sudden, he heard a loud bang and panicked, tripped and fell. He recalled two officers firing their weapons at him, including the officer behind the tree and another officer about 25 feet to his left. Within five seconds, there were several officers around him.

Throughout this part of the interview, Dinh denied having had an airsoft gun, having had anything in his hand when he entered the apartment, or having threatened the man he found inside. He also denied finding any guns in the

apartment, picking up a rifle, walking outside of the apartment with a weapon in his hand, or firing at any of the officers.

After this initial statement, the OCDASAU Investigator asked Dinh if he would talk about the shooting incident, as he was specifically there to investigate the officers' conduct as it related to the shooting of Dinh. Dinh asked for his mom to leave the room. Dinh then provided the following, different account of the events leading up to the shooting:

Dinh now stated that when he entered the apartment and encountered the unknown man, the man ran into the bedroom and hid under the blanket of the bed. During this interview, Dinh admitted that, for his safety, he had come into the apartment carrying one of his airsoft guns, a very realistic replica of a Beretta 9mm semi-automatic handgun. Dinh chased the man into the bedroom to try to find out what had happened to his friend and what the man was doing there.

He stated the man tried grabbing for his gun, at which point Dinh told the man to get out of the apartment or he would be hurt. The man fled from the apartment. Dinh stayed in the apartment for another 30 to 45 minutes, during which he claims he laid down for a brief time, tried to use a laptop, and then saw a locked gun case, in which he found six to seven rifles and two to three handguns. Dinh also located a key to the gun case and a can containing ammunition. He opened and examined the contents of the gun case and tried loading several of the weapons.

While he was doing this, Dinh stated that he heard his name being called out, and that the person's voice sounded like another friend from school. He decided to go downstairs to see if it was his friend. Later in the interview, Dinh recalled that these initial commands were something to the effect of, "David, come out. Put your hands up. Drop your airsoft gun. Step out where we can see you." He felt threatened, so he decided to arm himself for protection with an SKS rifle he had found before going down to investigate why his friend was calling him out of the apartment. He had chambered a round of ammunition and then fully loaded the magazine of the rifle with five additional rounds. He also found some earplugs and put one in one of his ears before leaving the apartment.

Once he got down the stairs leading into the courtyard, he spotted a male standing behind a tree approximately 30 feet away, whom he immediately identified as a plainclothes police officer. He could tell this from the way that the man presented himself with authority and was threatening him with a gun. He then heard a rough, middle-aged, authoritative voice, which he believed came from the man behind the tree, yelling out to him something like, "We know you have an airsoft gun. Drop it or we'll be forced to take action." Upon hearing this, Dinh said he quickly retreated into the stairwell.

A number of thoughts crossed Dinh's mind as he contemplated how to respond to the officers' commands to come out of the apartment, drop his weapons, and surrender. He believed that there was more than one officer present outside because breaking into the apartment would be considered a serious offense. Dinh was afraid that when the officers saw him, they would think that he had a real gun that he was going to use to shoot them, so they would shoot him. He also considered that there was no point in surrendering, as his conduct in breaking into someone's apartment and brandishing an airsoft gun would be considered a felony crime, for which he would likely be sent to juvenile hall for at least six months. Dinh believed that he was going to get arrested because he was also armed with a fully-loaded SKS assault rifle.

Given that he had no reasonable defenses for any of his conduct, Dinh concluded that there was no way out other than to engage the officers, get to his bicycle which he had ridden over to the apartment complex, and escape. He decided to take a proactive and aggressive approach to the situation and come out fighting instead of complying

with the request to surrender. He admitted that he never verbally responded to the police officers' verbal commands but just came out with "guns blazing."

After retreating back into the stairwell, Dinh decided to make a break for it and run, knowing that “there were people with guns and they’re going to make the most of them.” He flicked off the safety on his assault rifle and shouldered the SKS rifle with the butt stock against his shoulder in a “high-low position.” This position can be described as having the firearm against the shoulder, with the handler’s eyes against the sight at an angle perpendicular to the body and at a 75-degree, as opposed to a 90-degree angle, so as to have a better field of view in order to “locate threats.” Dinh described the first “threat” he located as being the armed, plainclothes officer behind the tree. Dinh said that, when he saw the officer behind the tree, he felt, “I guess this is the end; they’re not really gonna let me carry on with it.”

Dinh stated that immediately upon seeing the police officer behind the tree was armed, he opened fire on the officer. Later in the interview, he said that in taking this initial shot at the officer behind the tree, Dinh decided that he did not want to take the time he needed in order to fire a precision shot to hit the officer. This was because he feared that in the few seconds it would have taken him to take precise aim at the officer, the officer would have had the opportunity to have sighted Dinh, take a shot and hit Dinh first. Dinh described having fired the first shot “in the direction of” the first officer as a warning shot, but was aimed at the center of the officer’s body and acknowledged that it could have been mistaken as a shot intended to kill the officer. Dinh denied that killing the officer was his intention.

After taking this initial shot at the officer behind the tree, Dinh said he took two additional steps forward and fired off all of the remaining rounds in his weapon’s magazine in rapid succession. These subsequent five shots he described as “suppression fire” in the officer’s general direction so as to enable Dinh to run and get away. His plan was to run after he fired off his entire magazine in rapid succession. Dinh was instead hit by return fire from the officers. He believed that the first shot that hit him was a 12-gauge round that had been fired by the officer behind the tree. That round struck his arms and legs. Dinh stated that, at that point, he turned to the right and started to run, having decided to “get the hell out of Dodge because if they’re gonna, if he’s gonna fire again...I wouldn’t have a chance to do anything.”

Dinh believed he may have stumbled after the first round hit him, then tried to get back up and run, at which point he believed he was hit by a second 12-gauge round, this time fired by what he believed was another officer to his left. After this second hit, Dinh stumbled, fell and tried to scramble into the bushes to take cover from further fire. Because of the type of weapon they were shooting him with and the distance from which they were shooting, Dinh commented that he felt that the officers were shooting to wound and not kill him, and that he thought that was odd. Dinh admitted to opening fire on the officers first, and acknowledged that he was aware in doing this, that the officers would have the right to return fire.

After Dinh was shot, four to five officers, two of whom had their guns drawn, ordered Dinh to put his hands up. He raised his right hand and understood that the officers were trying to make sure that nothing else would happen, that he didn’t try to run away or grab their guns, and that he was not armed with a sidearm. He noted that three of the four officers were “dressed in their cleanly-pressed, blue uniforms, all with Glocks strapped to their duty belts.” He heard the officers calling for paramedics, who soon arrived on the scene to assist him.

### **EVIDENCE COLLECTED AT THE SCENE**

The scene consists of a 30-unit apartment complex made up of multiple, two-story, sand-colored stucco buildings with red tile roofs and white trim, configured in a triangular pattern, with the main entrance of the complex facing in a south-west direction. Within the triangular pattern of buildings is a large courtyard that includes a community pool surrounded by an approximate five-foot, black, picketed, wrought-iron gate. There are areas of grass surrounding the pool’s wrought-iron gate, sectioned by concrete sidewalks, leading to the multiple buildings, individual apartments, the pool, and alley. Even-numbered apartments are on the second story and odd-numbered apartments are on the ground level. Apartment Number 1 is immediately west of the main entrance. The apartments proceed in a sequential order, in a clockwise pattern, ending with Apartment Number 30 immediately east of the main entrance. The

apartment patios face the courtyard. The area between the ground level patio fences and the concrete sidewalks consist of dirt planters containing palm trees, banana trees, plants, shrubs and sections of grass. The shooting incident occurred within the courtyard area of Doe's apartment complex.

### **Evidence Markers 1-33**

During the course of the investigation, the following evidence was collected by OCCL forensic scientists, and identified by corresponding evidence control markers (EM), all as set forth with exact measurements and locations in the various OCCL reports related to the incident.

The following items were located in the north/south corridor of the two apartments directly below Doe's second-floor apartment, meaning the walkway area leading from the staircase from Doe's apartment where Dinh was first seen holding the semiautomatic rifle:

- EM-1: An expended 7.62x39 cartridge casing
- EM-2: An expended 7.62x39 cartridge casing
- EM-3: An expended 7.62x39 cartridge casing
- EM-4: An expended 7.62x39 cartridge casing
- EM-5: Shot cup/wad

The following item was located on the east/west sidewalk south of the patio of the neighboring first-floor apartment just to the east of Doe's residence:

- EM-6: An empty Glock brand 9mm magazine

The following items were located on the east/west sidewalk and along the existing planters on either side of the east/west sidewalk leading to the neighboring apartments to the east of Doe's residence (the area where Detectives Vang and Estes were deployed):

- EM-7: (1) expended 9mm cartridge casing
- EM-8: (3) expended 9mm cartridge casings
- EM-9: (1) expended .40 caliber cartridge casing and (1) expended 9mm cartridge casing
- EM-10: (1) expended 9mm cartridge casing
- EM-11: (1) expended .40 caliber cartridge casing
- EM-12: (2) expended .40 caliber cartridge casings and (5) expended 9mm cartridge casings
- EM-13: (1) expended 9mm cartridge casing
- EM-14: (1) expended .40 caliber cartridge casing
- EM-15: (1) expended .40 caliber cartridge casing
- EM-16: (1) expended 9mm cartridge casing
- EM-32: (1) expended .40 caliber cartridge casing

The following items were located on the east/west sidewalk south of the first-floor apartment underneath Doe's apartment and east of the north/south sidewalk east of the adjacent, first-floor apartment just to the west:

- EM-17: Shot cup/wad located east of an apparent blood stain/smear
- EM-18: (1) soft foam ear plug, yellow in color
- EM-20: Shot cup/wad

The following item was located on the grass area south of the east/west sidewalk south of the first-floor apartment underneath Doe's apartment and east of the north/south sidewalk east of the adjacent, first-floor apartment just to the west:

EM-19: A Norinco MAK-90 "Sporter" semiautomatic rifle, 7.62 x 39mm caliber. The safety was off, and the magazine was in place. Both the magazine and chamber were empty.

The following items were located in the area where the east/west sidewalk south of the first-floor apartment underneath Doe's apartment, which intersects the north/south sidewalk east of the adjacent, first-floor apartment just to the west:

EM-21: (1) copper jacketed bullet

EM-22: A pair of black canvas tennis shoes with white shoe laces; a pair of black and grey striped socks; a single black fingerless glove; a black wallet containing a California Driver's License, miscellaneous paperwork, gift cards, and a yellow legal size sheet of paper folded into the size of a credit card. Unfolded, it had an apparent bullet hole and the one page document was written in pencil and titled, "Spy Stuff"; a specialized screw driver type tool; a silver metal tie clip; a Game Boy Micro with an unidentified metal piece; a Polaroid 4GB Memory Stick; a guitar pick and memory card contained in a small square plastic memory card container.

EM-33: (1) copper jacketed bullet located at the base of the aluminum rain gutter's downspout.

The following item was located on the grass area east of the north/south sidewalk east of the adjacent, first-floor apartment just to the west of the first-floor apartment underneath Doe's apartment and north of the east/west sidewalk that runs along the community pool's north wrought iron picketed gate:

EM-23: Shot cup/wad

The following items were located in the area of the north/south sidewalk east of the adjacent, first-floor apartment just to the west of the first-floor apartment underneath Doe's apartment where it intersects the east/west sidewalk that runs along the community pool's north, wrought-iron picketed gate:

EM-24: Expended shot shell, 12-gauge, #00 buckshot

EM-25: Expended shot shell, 12-gauge, #00 buckshot

EM-26: Expended shot shell, 12-gauge, #00 buckshot

The following item was located in the grass area west of an apartment across the courtyard from Doe's apartment and south of the community pool's south, wrought-iron picketed gate:

EM-27: Copper jacket fragment

The following items were located in the planter area north of an apartment across the courtyard from Doe's apartment and west of the main entry of the apartment complex:

EM-28: (1) expended .223 caliber cartridge casing

EM-29: (1) bullet core

The following item was located on the staircase landing, along the west stucco wall, leading to upstairs apartments across the courtyard from Doe's apartment:

EM-30: Apparent bullet fragment

The following item was located on the inside closet floor of the outside patio storage closet of an apartment across the courtyard from Doe's apartment:

EM-31: (1) Copper jacket, possibly related to EM-29

### **Evidence Markers A-Z**

The following bullet holes and impact marks were identified by corresponding evidence control markers "A" through "S" on the east exterior stucco wall of the first-floor apartment directly to the west of the apartment underneath Doe's apartment:

A: Apparent bullet hole  
B: Apparent bullet hole  
C: Bullet hole where a copper jacketed bullet was recovered  
D: Bullet hole where a copper jacketed bullet was recovered  
E: Apparent bullet hole and impact mark  
F: Apparent bullet hole and impact mark  
G: Apparent bullet hole in aluminum rain gutter and stucco wall  
H: Apparent bullet hole in aluminum rain gutter and stucco wall  
I: Apparent bullet hole in aluminum rain gutter and stucco wall  
J: Bullet hole where a copper jacketed bullet was recovered  
K: Apparent bullet hole in aluminum rain gutter  
L: Apparent bullet hole  
M: Apparent bullet hole  
N: Apparent bullet hole  
O: Bullet hole where a copper jacketed bullet was recovered  
P: Apparent bullet hole  
Q: Bullet impact where imbedded copper jacketed bullet was recovered  
R: Apparent bullet hole  
S: Apparent bullet hole

The following was located on the wrought-iron picketed gate along the north side of the community pool:

T: Apparent bullet hole in the pool fence

The following was located on the wrought-iron picketed gate along the south side of the community pool:

U: Apparent bullet hole in the pool fence

Evidence control markers identified above as "T" and "U" are possibly from a single projectile.

The following were located in the patio belonging to an apartment across the courtyard from Doe's apartment:

V: Apparent bullet hole in north facing wood patio fence  
V2: Apparent bullet hole in west exterior stucco wall of patio, associated with V  
W: Apparent bullet impact mark on north facing stucco wall west of the sliding glass door

The following were located on the north facing stucco wall west of the wood fence belonging to the second-story balcony of an apartment across the courtyard from Doe's apartment:

X: Apparent through and through bullet hole

Y: Bullet hole east of "X"

The owner of this apartment allowed crime lab/scene personnel entry into the apartment to access the second story patio for purposes of searching for further evidence, possibly related to evidence marker "Y." On the far west end of the north facing patio was an outside patio storage closet. Inside the storage closet, an OCCL forensic specialist cut an oblong portion of dry wall from the north facing closet wall, at the base of the floor, and located a copper jacketed bullet from between the drywall and exterior stucco wall. The forensic specialist collected the copper jacketed bullet as evidence.

The following was located on the east exterior stucco wall of another second-story apartment across the courtyard from Doe's apartment, north of the exterior second story staircase landing leading to that apartment:

Z: Bullet hole where a copper jacketed bullet fragment was recovered.

### **Additional Documented But Unmarked Evidence**

The following was documented, sketched, photographed and collected, but not identified by evidence control markers:

An apparent bullet hole was located on the west wall of the second-story apartment just east of Doe's apartment. The apartment manager allowed crime lab/scene personnel entry into that apartment, as it was unoccupied at the time of the incident, in order to gain access to the second story balcony and the storage closet against the west facing wall. Inside the storage closet there was an apparent bullet hole in the drywall of the closet's lower west wall. An OCCL forensic scientist collected a partial bullet fragment on the floor from inside the storage closet.

An OCDA Investigator obtained consent to search from the resident of the first-floor apartment just to the west of the apartment underneath Doe's apartment for purposes of searching inside the residence for evidence related to evidence control markers "A" through "S," which were described as apparent bullet holes and/or bullet impact marks located on the east wall of the residence. The search was confined to the rooms positioned along the east wall of that apartment, including the southeast bathroom and northeast bedroom. An apparent bullet hole was observed on the east fiberglass wall of the bathtub/shower unit. An apparent bullet impact mark was observed on the west fiberglass wall of the bathtub/shower unit. A copper jacketed bullet was recovered from the floor of the bathtub/shower unit. Inside the northeast bedroom there was a closet along the south wall. Once clothes were removed from inside the closet and the east closet wall was exposed, there were three apparent bullet holes. The OCCL forensic scientist collected three copper jacketed bullets, one from a small ledge positioned horizontally along the inside east wall of the closet, one from atop a pile of clothing, and one from the closet floor. She also collected several bullet fragments from the closet floor.

### **Evidentiary Processing of the Officers Involved in the Shooting**

An OCDASAU Investigator responded to FVPD and observed an OCCL forensic specialist process Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich, collecting and photographing the following items:

#### **Detective Estes**

- A Glock, Model 26 pistol, 9mm Luger caliber. The pistol was unloaded and the magazine had been removed from the pistol.
- A loose cartridge, which had been removed from the chamber.
- The magazine containing 16 additional cartridges. The magazine was a 17-cartridge capacity.

### **Sergeant Ulrich**

- A pistol grip, with a black metal folding shoulder stock.
- Remington Model 870 Magnum 12-gauge shotgun. The shotgun was labeled with "54M", in grey, above the pistol grip. The shotgun had been unloaded prior to processing.
- Two "Federal tactical 2 ¾ 70mm 9-00 buck 12-gauge" cartridges.
- Duty Weapon (Photographs and cartridge count only): A black STI International Eagle 5.0, Model 2011 .40 caliber pistol. A cartridge was in the chamber and the magazine contained an additional 14 cartridges. The magazine had a 14-cartridge capacity.
- Two additional magazines containing 14 cartridges (full capacity).

### **Detective Vang**

- A Glock, Model 27 pistol, .40 Smith & Wesson caliber. A cartridge was in the chamber and the magazine contained an additional three cartridges. The magazine had a 10-cartridge capacity.
- An additional magazine containing nine cartridges. The magazine had a 10-cartridge capacity.

### **Officer Nilos**

- A black Remington Model 7615 Police pump action rifle, .223 Remington caliber. The stock was labeled with number "11", in two-inch grey writing. Masking tape, which was now torn, had been wrapped around the pump and barrel with "RV11" written on the tape.
- A 15-cartridge capacity magazine, removed from the rifle, containing 14 .223 caliber cartridges.
- A 25-cartridge capacity magazine, removed from the ammunition pouch attached to the rifle stock, containing 25 .223 caliber cartridges.
- Duty Weapon (Photographs and cartridge count only): Sig Sauer, Model P220, .45 caliber pistol and a mounted "SureFire X300" light. There was one cartridge in the chamber and the magazine contained six additional cartridges.
- Two additional eight cartridge capacity magazines containing eight cartridges.
- A seven cartridge capacity magazine containing seven cartridges.

## **EVIDENCE ANALYSIS**

### **Weapons/Firearm Examination:**

An Orange County Sheriff's Department Forensic Science Services Scientist III completed a firearms examination and comparison of the weapons used at the Scene by Dinh and by Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich, as well as the 25 cartridge cases, three shotgun shells, and numerous bullets and bullet fragments recovered from the scene. The following results and interpretations were made:

#### **Officer Nilos' .223 Remington Caliber Rifle**

A black Remington Model 7615 Police pump action rifle, .223 Remington caliber, operated normally during test firing. One cartridge case at the scene was identified to this firearm: EM #28.

#### **Detective Vang's .40 Smith & Wesson Caliber Pistol**

A Glock, Model 27 pistol, .40 Smith & Wesson caliber, operated normally during test firing. Seven cartridge cases at the scene were identified to this firearm: EM #9 (one of two cartridge case counts); EM #11; EM #12 (two of seven cartridge case counts); EM #14; EM #15; and EM #32.

### Detective Estes' 9mm Luger Caliber Pistol

A Glock, Model 26 pistol, 9mm Luger caliber, operated normally during test firing. 13 cartridge cases at the scene were identified to this firearm: EM #7; EM #8 (three of three cartridge case counts); EM #9 (one of two cartridge case counts); EM #10; EM #12 (five of seven cartridge case counts); EM #13; and EM #16.

### Sergeant Ulrich's Remington Model 870 12 Gauge Shotgun

A pistol grip, with a black metal folding shoulder stock, Remington Model 870 Magnum 12-gauge shotgun, operated normally during test firing. Three shot shells at the scene were identified to this firearm: EM #24; EM #25; and EM #26.

### Dinh's 7.62 X 39mm Caliber Semiautomatic Rifle

A Norinco MAK-90 "Sporter" semiautomatic rifle, 7.62 x .39mm caliber, operated normally during test firing. Four cartridge cases at the scene were identified to this firearm: EM #1; EM #2; EM #3; and EM #4.

### Projectile Examinations

The projectiles collected from the scene were analyzed by the OCCL with the following results:

<b>Evidence Marker or Evidence Location</b>	<b>Description</b>	<b>Weight (grains)</b>	<b>Comments</b>
Z	jacket & lead frag.	28.4 & 24.6	consistent with (c/w) 7.62x39mm steel jacketed bullet <b>(DINH)</b>
21	bullet	181.5	Federal .40 S&W caliber HST® <b>(VANG)</b>
27	jacket frag.	1.5	from steel jacketed bullet
29	lead core	48.9	no marks
30	lead frag.	9.7	no marks
31	jacket	26.4	c/w being from a 7.62x39mm steel jacketed bullet <b>(DINH)</b>
33	bullet	146.3	Federal 9mm Luger caliber HST® <b>(ESTES)</b>
Y	bullet	122.9	c/w 7.62x39mm steel jacketed bullet <b>(DINH)</b>
#20 balcony closet floor	jacket	7.3	c/w .223 REM caliber <b>(NILOS)</b>
C	bullet	181.0	Federal .40 S&W caliber HST® <b>(VANG)</b>
D	bullet	170.8	Federal .40 S&W caliber HST® <b>(VANG)</b>
J	bullet	147.7	Federal 9mm Luger caliber HST® <b>(ESTES)</b>
O	bullet	147.7	Federal 9mm Luger caliber HST® <b>(ESTES)</b>
Q	bullet	148.9	Federal 9mm Luger caliber HST® <b>(ESTES)</b>

white shirt #15 bedroom closet	bullet	147.6	Federal 9mm Luger caliber HST® ( <b>ESTES</b> )
bedroom closet ledge apt. 15	bullet & 2 metal frags. (non-bullet)	146.8	Federal 9mm Luger caliber HST® ( <b>ESTES</b> )
apt. 15 closet floor bedroom	bullet	145.0	Federal 9mm Luger caliber HST® ( <b>ESTES</b> )
apt. 15 bedroom closet floor	metal frag. (non-bullet)	N/A	N/A
bathub apt. 15	bullet	178.5	Federal .40 S&W caliber HST® ( <b>VANG</b> )

**Toxicology:**

A toxicological examination of Dinh’s pre-transfusion blood conducted at the U.C. Irvine Medical Center for drugs and alcohol was negative.

**DINH’S MEDICAL CONDITION**

On Dec. 28, 2010, at 11:07 a.m., FVFD was dispatched to the scene in response to a call from FVPD. At 11:10 a.m., FVFD personnel arrived at the scene and were directed to the interior courtyard of the apartment complex, where they were advised of the circumstances of the shooting by FVPD. The responding paramedics observed Dinh lying on his back, handcuffed. At the request of FVFD, Dinh’s handcuffs were removed. Paramedics then conducted a quick assessment of Dinh, who was pale and barely conscious. Paramedics observed multiple gunshot wounds to both of Dinh’s arms, both of his knees and to his chest. Due to the nature of Dinh’s injuries, he was immediately placed on the ambulance gurney and transported to University of California, Irvine Medical Center (UCIMC).

With the administration of oxygen and intravenous saline in the ambulance, Dinh’s condition stabilized while en route to UCIMC. When asked by the paramedics what he had done to have this happen to him, Dinh replied, “I shot at them.”

At 11:30 a.m., Dinh arrived at UCIMC and was treated by the hospital trauma team.

At approximately 1:15 p.m., an OCDA Investigator arrived at the UCIMC emergency room, where she observed Dinh lying supine in a hospital bed being tended to by nurses. Dinh was being given oxygen through a breathing tube and had intravenous lines in each arm. A registered nurse informed the OCDA Investigator that Dinh had multiple gunshot wounds to his legs, arms and chest. He was semi-conscious and had stable vital signs. At approximately 2:15 p.m., Dinh was moved to the intensive care unit for monitoring and pulmonary support. He was awake and coherent and able to answer the questions asked by his treating physicians and medical personnel.

In total, Dinh suffered 38 gunshot wounds to both arms, both legs, and his chest, some being entrance wounds and some being exit wounds. Chest X-rays also revealed bilateral pneumothoraces, meaning that air accumulated in the space between Dinh’s lungs and chest wall, for which bilateral chest tubes were placed into his lungs on Dec. 28, 2010, and removed a few days later on Jan. 2, 2011. Additional x-rays showed some bruising to his lungs and bilateral second rib fractures. On Jan. 3, 2011, Dinh was released from UCIMC and discharged to Orange County Juvenile Hall in stable condition, capable of full self-care and daily activities as tolerated.

**DINH’S PRIOR CRIMINAL HISTORY**

Dinh’s prior criminal history will not be revealed because he is a minor. All facts and circumstances were taken into consideration.

### DINH'S POST-INCIDENT CONVICTION

Dinh was directly charged and prosecuted as an adult under Orange County Superior Court Case # 10WF3219 with one felony count of violating Penal Code Section 664(e)-187(a) [Attempted Premeditated Murder of a Police Officer]; one felony count of violating Penal Code Section 245(d)(1) [Assault with a Semiautomatic Firearm on a Peace Officer]; one felony count of violating Penal Code Section 211/212.5(a) [Robbery]; one felony count of violating Penal Code Section 236/237(a) [False Imprisonment by Force or Violence]; and two felony counts of violating Penal Code Section 459-460(a) [First Degree Residential Burglary of an Inhabited Dwelling]; with sentencing enhancements for the personal use and discharge of a firearm in the commission of the crimes.

Dinh was found guilty by a jury July 15, 2011, of the lesser included offenses of Attempted Voluntary Manslaughter and Assault with a Semiautomatic Firearm, the sentencing enhancement for the personal use of a firearm, and the crime of Felony False Imprisonment by Force or Violence. He was sentenced by the Court to serve 10 years and two months in state prison and is currently incarcerated, serving that sentence.

### 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 [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." 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 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 "[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." *Id.* at 396.

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich with Dinh.

## **LEGAL ANALYSIS**

In reviewing the voluntary statements of Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich contained in the interviews they gave to investigators from FVPD and OCDA, each of them was in actual fear for his own life, the lives of his fellow officers, and/or lives of other civilians at the moment they fired their weapons at Dinh. Dinh's statements also support the officers' right to self-defense and these law enforcement officers were both reasonable and justified in light of all the surrounding circumstances and in light of their extensive law enforcement and weapons knowledge, training and experience at the time of the shooting. In their interviews, Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich made statements consistently indicating the following:

- a) Once at the scene, they had knowledge that the situation to which they were responding as law enforcement officers involved a suspect armed with a handgun who had forced entry into a stranger's apartment and, using his weapon, had threatened the life of the resident of that apartment;
- b) They became aware at the scene that the armed suspect in the apartment was likely the same individual, Dinh, had contact with FVPD earlier that same morning, during which he had exhibited erratic behavior and some mental or psychological instability;

- c) Although there was intelligence circulated at the scene that the weapon used by Dinh on the victim might be an airsoft gun, the victim, who was very proficient in firearms had indicated that he could not be certain that the weapon used on him was an airsoft gun and not a real handgun. They also learned from the victim that he maintained multiple firearms in his apartment in a gun case and the closet, to which Dinh could potentially gain access;
- d) When Dinh emerged from the stairwell of the apartment, he was not armed with a handgun but with what appeared to be an AK-47-type, semi-automatic assault rifle;
- e) Based on the manner in which Dinh was handling the rifle, he appeared to have some experience using such weapons and, based on the position in which he was holding the rifle, appeared to be actively seeking a target to shoot;
- f) The type of weapon being used by Dinh when he emerged from the apartment was capable of permeating the walls of the surrounding apartment buildings and the protective gear being worn by the officers;
- g) Dinh failed to respond to or obey the commands of Detective Estes to surrender himself peacefully and Officer Nilos to drop his weapon, and instead fired upon Officer Nilos repeatedly with his assault rifle;
- h) As soon as Dinh fired upon Officer Nilos, it became evident to all of the officers that Dinh was not armed with an airsoft gun, but was firing a real, loaded assault rifle;
- i) After Dinh had fired his weapon repeatedly at Officer Nilos, he then began moving toward the direction where several other officers were located in a position where they would likely be unaware of Dinh's approach and from which they would have no chance of escape if Dinh found them. Moreover, as he moved toward those other officers, Dinh continued to hold his rifle in a position indicating he was prepared to shoot and actively seeking a target to shoot;
- j) At the time of the shooting, each of the four officers who shot at Dinh was in fear of himself being shot and killed by Dinh and/or in fear that Dinh was about to shoot and kill fellow officers;
- k) Dinh did not seem to react at all to the initial return fire by the officers, and even after he was impacted by the first round, Dinh got back up and continued to move toward the location of the other officers with his rifle still in the "ready" position;
- l) Even after he was brought down by return fire from the officers, Dinh's attitude of non-compliance toward law enforcement was evident from his continued failure to obey the commands of the officers attempting to take him into custody.

As the California Supreme Court held in a recent case, it is well-settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect 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....'" *Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 527.

In analyzing the conduct of Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich, one of the questions to be asked is similar to what the United States Supreme Court observed in *Brown, supra*: "[t]he 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 peace officer's need to protect himself and others." ' " *Id.* at 527. Furthermore, the Supreme Court held that "[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....[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation....In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required." *Id.* at 527-528.

In the present case, it is well-settled that in evaluating the conduct of Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich, “[w]e 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.

The reality that Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich were facing that morning on Dec. 28, 2010, included the need on their parts to make a split-second decision when confronted with an uncooperative man, armed with a loaded semi-automatic assault rifle. Dinh, after committing (at a minimum) an armed burglary and assault with a deadly weapon on a stranger in an apartment, failed to obey the commands of the police to surrender and instead opened fire on Officer Nilos, a clearly identifiable, uniformed law enforcement officer.

Upon being met with return fire from the officers, Dinh still failed to surrender and continued to move, armed, in the direction of other officers, whose location left them vulnerable to the continuing threat to life he posed. The fact that Dinh was the aggressor in this situation and created the deadly threat to which the officers were forced to respond is corroborated not only by the consistent accounts of all of the officers and civilian witness John Doe #2, but most disturbingly by Dinh’s own account of his conduct that morning and his decision to initiate gunfire against the officers in his effort to effect his escape plan from the apartment complex. Dinh repeatedly admitted when interviewed that it was he who had fired first against the police. Dinh even acknowledged that, by shooting at the officers, he was providing absolute justification for the officers to return potentially deadly fire against him.

Where potential danger, emergency conditions, or other exigent circumstances exist, the Supreme Court’s definition of reasonableness is comparatively generous to the police. “In effect, ‘the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases....’ A police officer’s use of deadly force is reasonable if ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’” ... ‘Thus, “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”’ ” *Id.* at 528.

As stated above, the circumstances leading up to and surrounding the entire encounter between Officer Nilos, Detective Vang, Detective Estes, Sergeant Ulrich and Dinh, especially when viewed through the perception of the officers’ combined, extensive law enforcement and military experiences, reasonably indicated to the officers an ongoing intent by Dinh to attack the officers in a potentially deadly way. In their perception, this required and justified the officers’ response in shooting him to thwart that attack and to save the lives of the officers who had responded to the scene, as well as the lives of all private citizens in the area who might, even inadvertently, become the target of Dinh’s deadly shooting rampage.

Their concerns and conclusions were objectively and subjectively reasonable under all of the circumstances confronted by the officers at the scene that morning. The reasonable perception of Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich as they observed an armed Dinh emerge from the apartment, actively seeking targets and opening fire on a uniformed police officer, intensified the already-dangerous dynamics of the situation in which the officers found themselves. Under the circumstances, it was reasonable, and even necessary, for them to conclude that a danger existed which could result in death or injury to themselves and others as a result of the observed actions of Dinh. They thus acted reasonably in using deadly force to defend against the imminent, perceived danger of suffering bodily injury or possibly death.

In order for Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich 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 Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich did not act in reasonable and justifiable self-defense or defense of others when they shot at Dinh. 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 Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich to use the force that they did in this circumstance. There is significant evidence that Officer Nilos, Detective Vang, Detective Estes and Sergeant Ulrich each acted reasonably under the circumstances.

**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 Officer Nilos, Detective Vang, Detective Estes or Sergeant Ulrich, and there is substantial evidence that the officers' actions were reasonable and justified under the circumstances when they shot Dinh on Dec. 28, 2010.

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



**Aleta Bryant**  
Senior Deputy District Attorney  
Special Prosecutions Unit



Read and Approved by **MICHAEL LUBINSKI**  
Senior Assistant District Attorney, Special Projects