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December 11, 2015

Chief Daniel Llorens  
Fountain Valley Police Department  
10200 Slater Avenue  
Fountain Valley, CA 92708

Re: Officer-Involved Shooting on April 26, 2015  
Fatal Incident involving Dean Kristian Genova  
District Attorney Investigations Case # S.A. 15-008  
Fountain Valley Police Department Case # 15-19668  
Orange County Crime Laboratory Case # FR 15-46426

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 Shaun McKay. Dean Kristian Genova, 45, died as a result of his injuries. The incident occurred in the City of Fountain Valley on April 26, 2015.

## OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the April 26, 2015, officer-involved shooting fatality of Genova. 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 officer 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 April 26, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, over a dozen interviews were conducted. OCDASAU investigators also obtained and reviewed the following: FVPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports, crime scene investigation photographs, medical records and photographs related to the injuries sustained by Genova, criminal history records related to Genova including prior incident reports, the personnel records of Officer McKay, and other relevant reports and materials including audio recordings of the conducted area canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident. The OCDA has impartially reviewed all available evidence and applied all applicable legal standards. 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 McKay. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

### **INVESTIGATIVE METHODOLOGY**

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

When OCDASAU Investigators conclude the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET, or Gangs Units review officer-involved shooting fatalities and custodial death cases to determine whether criminal charges are appropriate. Deputy district attorneys assigned to the Special Prosecutions Unit review non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with the supervising Assistant District Attorney in the Special Prosecutions Unit, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. FVPD Officer McKay did not cooperate with OCDA's investigation and declined to provide a voluntary statement to OCDA Investigators regarding this fatal shooting incident, and relied on his right against self-incrimination under the Fifth Amendment to the United States Constitution. As legally and ethically mandated, OCDA did not draw any negative inferences from Officer McKay's invocation of his right to remain silent and refusal to provide a voluntary statement about his involvement in the shooting incident. FVPD Sergeant Antonio Spangler, and Officers Bill Hughes and Mitchell Martinez gave voluntary statements to OCDA Investigators on April 26, 2015. In addition, the OCDA relied in part on a surveillance video of the incident and audio recording of the incident captured by officers' recording devices.

### **FACTUAL SUMMARY**

Genova had a history of methamphetamine and prescription medication abuse. Genova lived off and on with his parents who were aware of his drug problem. Genova's driving privileges were suspended prior to his death. John Doe 1, a friend of Genova, drove him around as needed.

On April 25, 2015, John Doe 1 spent the day with Genova at Genova's parents' residence. John Doe 1 stayed at the residence for dinner, during which, Genova's parents discussed getting their son into a rehabilitation program. Genova's parents were scared of their son. Genova appeared to be doing well shortly after dinner but later began hallucinating. Genova claimed he saw lasers being pointed at him that were burning his face.

On April 26, 2015, at approximately 3:00 a.m., Genova told Doe 1 he was going to take his father's car and go see his ex-wife. John Doe 1 decided to drive Genova, but took him to Orange Coast Memorial Medical Center in Fountain Valley instead. John Doe 1 convinced Genova to be evaluated by a doctor due to Genova's behavior.

At approximately 3:37 a.m., Genova and John Doe 1 entered the lobby of the Orange Coast Memorial Medical Center emergency room (ER). Based on surveillance footage taken from that lobby, Genova appeared to be restless and

agitated as he filled out the hospital registration forms. Genova was unable to fill out the registration form on his own and had to be assisted by John Doe 1. After filling out the forms, Genova was triaged and sent back to the waiting room. Genova told the nurse he was staying in the hospital. At 3:51 a.m., approximately 14 minutes later, Genova changed his mind. Genova told the triage nurse he was not staying in the hospital and walked out of the emergency room. Genova had a white blood pressure cuff attached to his left forearm when he exited the ER. Genova told John Doe 1 and the medical staff, "You're all against me, shooting me with lasers!" Genova was last seen running across the street towards Claim Jumper restaurant, located on the southeast corner of Brookhurst Street and Talbert Avenue. John Doe 1 followed Genova but lost sight of him in the area of the Claim Jumper. After several minutes of looking for him, John Doe 1 was unable to locate Genova.

Sometime before 4:00 a.m., a Rite-Aid Pharmacy employee arrived at the Rite-Aid store located at 18395 Brookhurst Street. The store was closed and locked when the employee arrived. While standing at the cash register, the employee heard a bang at the north entry doors and noticed the glass on the entry door was shattered. The employee saw a male subject, later identified as Genova, walk into the store through the bottom portion of the broken glass door. As Genova walked toward the front counter, the employee ran towards the south doors and out of the business. Upon exiting the Rite-Aid, the employee went to the neighboring Ralph's Grocery Store to call the police.

The interior Rite-Aid Pharmacy security surveillance shows Genova arriving at the Rite-Aid Pharmacy at approximately 3:54 a.m. The footage shows Genova approach the north double glass entrance door of the store and throw a concrete block at it. The top portion of the glass door shattered as a result. Approximately five seconds later, Genova re-appears in front of the north entrance double door and throws another concrete block, shattering the bottom portion of the glass door. After shattering the bottom portion of the glass door, Genova enters the Rite-Aid Pharmacy, starts walking through the store and removes items from display shelves. Genova also grabs a fire extinguisher that was mounted to a support beam inside of the store.

At approximately 4:04 a.m., the FVPD received a 911 call in regards to a burglary in progress at the Rite-Aid Pharmacy. At 04:06 a.m., FVPD K9 Officer Hughes, Officers Ben Rody, Martinez, McKay and Sergeant Spangler arrived at the Rite-Aid Pharmacy. Upon their arrival, they noticed that the north glass door of the store was shattered. The officers formulated a plan to enter and search the interior of the store, utilizing the assistance of the FVPD canine. Sergeant Spangler requested Officer Hughes employ his canine to search the interior of the Rite-Aid for any suspects. Officer Hughes made two verbal announcements, letting anyone inside Rite-Aid know he was deploying a FVPD canine. Officer Hughes received no response and he then directed the canine to search for any suspects. Sergeant Spangler, Officers Hughes, McKay, and Martinez remained along the east facing wall of the business, walking south, while the canine searched the business. Officer Hughes remained close to the north entry door in the event the canine exited through the open door. Approximately 40 seconds later, Genova made his presence known to officers by verbally announcing he was in the rear, southwest side, of the business. Genova was found in the rear of the business, in aisle 4. As the officers neared aisle 4, Genova was standing on top of a stocking ladder with his hands in the air and a cellphone in his right hand as if he was surrendering. Sergeant Spangler asked Genova if there was anyone else in the store, and Genova told him there was another person in the storeroom on the northwest portion of the store. Sergeant Spangler remained in the center of the store with his handgun drawn in front of aisle 4, covering and focusing his attention on the storeroom door. Officers Hughes, Martinez, and McKay approached Genova who was still on the ladder.

Officer McKay had his Taser drawn, and Officer Martinez approached with his handgun drawn from his holster as they both walked towards Genova who was descending from the stocking ladder. Officer Hughes regained a hold of his canine and circled around to the north to cover the rear because of the potential second suspect inside of the business. Officers Martinez and McKay maintained a visual contact with Genova as he descended down the ladder. Genova saw the officers holding their weapons and commented to Officer Martinez, "What, are you going to shoot me?" As Genova reached the floor he began to back away from Officers McKay and Martinez. Officer Martinez ordered Genova to the ground but Genova did not comply and continued walking away toward the rear of the store. Officers Martinez and McKay both holstered their weapons and continued to verbally command Genova to lie on the ground. Genova

continued to ignore the orders. At approximately 4:05 a.m., Officers Martinez and McKay grabbed Genova, who continued resisting, and wrestled him to the ground. Officer Hughes commanded the canine to bite Genova on his left leg but the bite did not produce any reaction from Genova who continued resisting and fighting both Officers Martinez and McKay.

Officers Martinez and McKay were both on their knees attempting to get control of Genova's arms to restrain him. Genova was lying on his left side with his head facing north towards Officer Martinez. Officer Martinez knelt in front of Genova, with the right side of his body at Genova's front side. Officer McKay knelt behind Genova attempting to grab a hold of Genova's arm, and Officer Hughes attempted to secure Genova's legs to restrain him. Genova, still resisting, yelled out to Officers Martinez and McKay to kill him. Genova then grabbed and bit Officer McKay's left forearm. As Genova fought with the officers, Genova reached for and grabbed a hold of Officer Martinez's gun. Officer Martinez repeatedly ordered Genova to release the gun but Genova ignored the orders. After grabbing the hand grip of the gun, Genova attempted to pull the weapon from Officer Martinez's holster. Fearing Genova would take control of his weapon and shoot him or the other officers, Officer Martinez punched Genova several times to make Genova release the weapon. Officer Martinez's verbal commands and the officers' collective use of non-deadly physical force did not result in Genova releasing his grip on the weapon. Officer Martinez urgently yelled to Officers McKay and Hughes that Genova had control of his weapon. Officer Martinez felt Genova turn the holster toward his [Officer Martinez's] right leg, pointing the muzzle at Officer Martinez. Officer Hughes noted the alarming tone of Officer Martinez's voice when he announced Genova had control of his gun. At approximately 4:06 a.m., Officer McKay thereafter fired a single gunshot into Genova's back. Genova let go of Officer Martinez's weapon, after which Officer Martinez noticed that Genova had pulled hard enough at his gun to rip the leather holster from its leg shroud. Officer Martinez's holster and gun hung down around his ankles, held by the holster strap.

At approximately 4:07 a.m., Officers Martinez and Hughes provided Genova medical attention while waiting for the Fountain Valley Fire Department (FVFD) paramedics. At approximately 4:16 a.m., FVFD paramedics arrived on scene and took over treating Genova from the FVPD officers. FVFD paramedics checked Genova for a pulse. Genova was unconscious, not breathing, and he had no pulse. Paramedics noticed what appeared to be a single gunshot wound to Genova's mid-right back area. Paramedics began chest compressions and ushered Genova on a backboard and gurney to the ambulance. Genova was transported by CARE ambulance to the UC Irvine Medical Center (UCIMC). FVFD paramedics traveled in the back of the ambulance and continued their lifesaving medical intervention, which consisted of advanced life support. At approximately 4:40 a.m., the ambulance arrived at UCIMC. At this time, medical intervention was transferred to the medical staff of the trauma center. Genova never regained consciousness and he was not able to breathe on his own, nor was he able to sustain a pulse while under the care of paramedics. Upon arrival at UCIMC, Genova remained unconscious, without cardiac movement and he had no pulse. Medical personnel attempted unsuccessfully to resuscitate him. At 5:05 a.m., the attending physicians pronounced Genova deceased.

#### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- EM #2 - One .45 cartridge, head stamp FEDERAL and a "Marlboro" cigarette pack
- EM #3 - Fire extinguisher and a "Monster" energy can
- EM #4 - One Jose Cuervo tequila silver bottle unopened with security cap
- Left shoe, cell phone, and video surveillance equipment

#### **AUTOPSY**

On April 27, 2015, a postmortem examination of Genova was conducted by Dr. Nicole Ellis, a forensic pathologist for the Orange County Sheriff-Coroner. Dr. Ellis recovered a bullet from the perigastric soft tissue between Genova's lesser curvature of the stomach and the liver. Dr. Ellis determined that Genova died as a result of a single gunshot wound to the right side of his back.

## **EVIDENCE ANALYSIS**

### **Firearms Examination**

Officer McKay's SIG SAUER Model P220 pistol was test fired at the OCCL and fired without malfunction.

The SIG SAUER P220 pistol was received unloaded and with the magazine removed. Packaged with the pistol were a single cartridge from the chamber and seven Federal .45 Auto caliber cartridges, each with an HST jacketed hollow point bullet. Packaged separately from the pistol were two empty eight cartridge capacity SIG SAUER brand magazines and sixteen loose cartridges. Both magazines fit the submitted pistol. The 16 cartridges are Federal .45 Auto caliber cartridges, each with an HST jacketed hollow point bullet.

The hammer of the pistol will release with approximately four and one-quarter pounds of trigger pull in single action and with approximately eight pounds in double action. The pistol was impact tested. At no time did the cocked hammer release without direct trigger pressure. The pistol was test fired using ammunition from the laboratory collection. The barrel of the pistol has rifling of six lands and grooves with a left twist. The land impression widths of the test fired bullets measure .075 to .077 inches, and the groove impression widths measure .152 to .154 inches.

The fired cartridge case from EM #2 was a Federal .45 Auto caliber. The fired cartridge case was microscopically compared to the test fired cartridge cases from the SIG SAUER pistol, #G413683. Therefore, the firearm examination confirmed that the fired cartridge case collected from the Rite-Aid was fired from Officer McKay's weapon.

### **Toxicological Examination**

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

<b>DRUG</b>	<b>MATRIX</b>	<b>RESULTS &amp; INTERPRETATIONS</b>
Ethanol	Postmortem Blood	0.024 ± 0.003 % (w/v)
Amphetamine	Postmortem Blood	0.132 ± 0.009 mg/L
Methamphetamine	Postmortem Blood	1.58 ± 0.11 mg/L
Hydrocodone	Postmortem Blood	0.203 ± 0.018 mg/L
Acetaminophen	Postmortem Blood	Detected
Ibuprofen	Postmortem Blood	Detected
Venlafaxine	Postmortem Blood	Detected

### **GENOVA'S PRIOR CRIMINAL HISTORY**

Genova's extensive criminal history was reviewed and considered. Genova was previously arrested for the following charges:

- Disorderly conduct/public intoxication drug/alcohol
- Disturbing the peace
- Driving under the influence of alcohol/drugs
- Battery on a spouse/cohabitant
- Inflict corporal injury on spouse/cohabitant
- Brandishing a replica firearm
- Exhibit a deadly weapon, not a firearm
- Possession of control substance without a prescription

## STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 333.)

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

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." The Court of Appeal in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, *i.e.*, a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." (*Kortum v. Alkire, supra*, 69 Cal.App.3d at p. 333.)

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he 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/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

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

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment's "objective

reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.)

The United States Supreme Court's analysis in *Graham* is very much applicable to the circumstances surrounding the interactions of Officer McKay with Genova.

### LEGAL ANALYSIS

The facts in this case are determined by considering both FVPD officer statements to the OCDA Investigators, supplemented by other relevant material. The supplemental material includes, but is not limited to, surveillance footage of the incident and audio recording of the incident. Since Officer McKay refused to cooperate with this investigation and did not give a voluntary statement to OCDA investigators, the determination of the facts in this case was made without the benefit of having direct evidence about the state of mind of Officer McKay at the time he discharged his weapon causing the death of Genova. As previously mentioned, clear and long-established legal standards mandated by the United States Constitution – which apply to the District Attorney's Office's evaluation of any type of investigation – require that no negative inferences be drawn from Officer McKay's decision to exercise his right against self-incrimination.

There is no issue in this case about the identity of the shooter. The sole issue in this case is whether Officer McKay is criminally culpable for his actions on April 26, 2015. As stated above, in order to charge Officer McKay with a criminal violation, it is required the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the officer's conduct. In context, the prosecution must prove beyond a reasonable doubt that Officer McKay did not act in lawful self-defense or defense of another. If the actions of Officer McKay were an exercise of lawful self-defense or defense of another, then criminal charges are not warranted.

It is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*See Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. "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." (*See Brown*, 171 Cal.App.4th at 528.) In the present case, it is clear that Genova was intending on arming himself with Officer Martinez's gun at the same time that Genova was resisting the officers and completely ignoring all their commands.

Therefore, in the present case, the totality of the available evidence supports the following conclusion: Officer McKay may have justifiably believed Genova posed a significant threat of death or serious bodily injury to the officers on scene and, in particular, to Officer Martinez. This conclusion is based not on any individual fact viewed in isolation, but instead on the sum of the available evidence, including but not limited to:

- Officers lawfully initiated contact with Genova because they were responding to a burglary in progress;
- Throughout the encounter, Genova repeatedly ignored lawful police commands;

- Genova physically resisted lawful efforts by officers attempting to apply handcuffs;
- During the ensuing struggle, Genova acquired control of Officer Martinez's firearm;
- Officer Martinez's firearm was in fact loaded and, more pertinently, Officer McKay would reasonably believe Officer Martinez's firearm was loaded;
- At point blank range, Genova aimed the firearm at Officer Martinez;
- Before using deadly force to get Genova to let go of Officer Martinez's firearm, officers first attempted verbal commands and non-deadly physical force to secure Genova's compliance;
- Over a span of roughly 10 seconds, Genova ignored not less than four separate verbal commands to release Officer Martinez's firearm;
- Officer McKay shot Genova only after Officer Martinez alerted the other officers that Genova had actually gained control of his firearm;
- The tone used by Officer Martinez when announcing that Genova had control of his gun would lead an objective officer in Officer McKay's position to understand the gravity and immediacy of the danger posed; and
- Officer McKay fired only one shot.

It should further be noted that for Officer McKay to be lawfully convicted of any crime, it would be the OCDA's burden to prove his guilt beyond a reasonable doubt. Specifically as it relates to the shooting, the OCDA would be required to prove beyond a reasonable doubt that Officer McKay – in firing a single shot at a suspect aiming a firearm at another officer – did not act in lawful self-defense or defense of another. Based on the totality of the known evidence, no reasonable jury could lawfully conclude that Officer McKay committed a crime. In this case, Officer McKay did not commit a crime and he was doing his job in a reasonable and lawful manner.

**CONCLUSION**

Based upon a review of all the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that no criminal culpability exists on the part of Officer McKay stemming from the April 26, 2015, fatal shooting of Genova. Accordingly, the OCDA is closing its inquiry into this incident.



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**CHRIS ALEX**  
DEPUTY DISTRICT ATTORNEY  
GANGS UNIT



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READ AND APPROVED BY **EBRAHIM BAYTIEH**  
ASSISTANT DISTRICT ATTORNEY  
SUPERVISING HEAD OF COURT – SPECIAL PROSECUTIONS UNIT