

OFFICE OF THE DISTRICT ATTORNEY

February 22, 2017



REPORT ON THE DECEMBER 16, 2015,  
SHOOTING OF BRYANT DUNCAN  
BY VENTURA COUNTY SHERIFF'S DEPUTY  
LEON MAH

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## I.

### INTRODUCTION

On December 16, 2015, at approximately 11:52 a.m., Bryant Duncan placed a 911 call on a cordless phone belonging to the 7-Eleven convenience store located at 255 Carmen Drive in the city of Camarillo. Duncan informed the dispatcher he was going to rob the 7-Eleven. He also said, "I need cops over here to kill me. I need to die."

Deputy Leon Mah, who was working uniform patrol in Camarillo, stopped his patrol vehicle for a red light at the intersection of Carmen Drive and Daily Drive. While stopped at the light, Deputy Mah received a police radio transmission of a suspicious subject at his location. Deputy Mah looked up to see Duncan walking towards his patrol vehicle.

Duncan remained on the line with dispatch as he approached Deputy Mah's vehicle. Duncan informed the 911 operator, "There's a cop right here. I'm going to get it done." Duncan rode his skateboard over to Deputy Mah's patrol vehicle and stood in front of the vehicle. Deputy Mah told Duncan to walk to the side of the road and Duncan complied. Deputy Mah activated his emergency lights, made a U-turn, and parked on the east-side curb of Carmen Drive. When Deputy Mah instructed Duncan to get out of the way, Duncan said, "I need you to kill me." He added, "I'm not going to stop until you kill me." Duncan opened the passenger door to Mah's patrol vehicle. When Duncan refused to close the door, Deputy Mah exited his patrol vehicle to contact Duncan.

Deputy Mah initially approached Duncan with his Taser drawn. Deputy Mah looked to the roadway to check traffic. When he looked back at Duncan, Duncan was holding a knife in his right hand in front of his chest. Seeing that Duncan was now armed with a knife, Deputy Mah switched from his Taser to his department-issued handgun. Duncan repeatedly told Deputy Mah to kill him. Deputy Mah repeatedly ordered Duncan to drop his knife but Duncan refused.

Duncan walked towards Deputy Mah with the knife in his hand. Deputy Mah walked backwards down the sidewalk on the east side of Carmen Drive keeping his weapon drawn. Deputy Mah continued ordering Duncan to put the knife down and get on the ground. Duncan continued advancing on Deputy Mah, closing the distance between the two men. At one point, Duncan stopped and took a few steps backwards. However, Duncan then leaned forward and ran at Deputy Mah with the knife extended behind him and to his right side in a manner consistent with getting ready to thrust it forward. When Duncan got to within a few feet of the deputy, Deputy Mah fired a single shot. However, Duncan leaned forward and continued going towards Deputy Mah while he was still armed with the knife. Deputy Mah continued backing up as he fired two more rounds. Duncan continued moving towards Deputy Mah, further closing the distance between them. Deputy Mah fired two additional shots, yet Duncan continued to advance. Deputy Mah fired a sixth round just prior to slipping on the curb and falling backwards into the roadway. Duncan took several steps forward before collapsing and falling into the street. Deputy Mah quickly got back up on his feet. He kept his gun drawn on Duncan but fired no additional shots.

Deputy Mah immediately notified dispatch of the shooting. Medical personnel arrived and rendered aid to Duncan both at the scene and during transport to the hospital. However, Duncan remained unconscious and nonresponsive. He was declared deceased at the hospital.

A passenger in a vehicle who had stopped on Carmen Drive for a red light at the Daily Drive intersection filmed a significant portion of the incident on his cellular phone. The footage shows that, before firing the first shot, Deputy Mah was backing away from Duncan for approximately 24 seconds as Duncan came towards him with a knife. Measurements taken at the shooting scene revealed that Deputy Mah retreated a total of approximately 106 feet as Duncan came at him armed with a knife, up to the point the last shot was fired.

The District Attorney's Office has a 24-hour, on-call, officer-involved shooting team available to all Ventura County law enforcement agencies to assist in the investigation of officer-involved shootings. Once the District Attorney's Office was notified of the shooting, Senior Deputy District Attorney Thomas Dunlevy and District Attorney Investigators Corina Wondoloski and Kimberly Michael responded to the shooting scene and consulted with the investigating officers.

The Ventura County Sheriff's Department conducted an investigation of the shooting, which included interviewing witnesses, collecting physical evidence, and photographing the area of the shooting.

On October 21, 2016, the Ventura County Sheriff's Department's investigation reports were submitted to the District Attorney's Office for a determination of whether the shooting of Bryant Duncan was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

Senior Deputy District Attorney Thomas Dunlevy was assigned to review this case. He examined approximately 970 pages of reports, materials, and recordings, including interviews of police and civilian witnesses, diagrams, photographs, records, and radio transmissions.

Based on the evidence available for review, the District Attorney's independent investigation and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Bryant Duncan by Ventura County Sheriff's Deputy Leon Mah was justified and not a criminal act.

II.  
STATEMENT OF FACTS

A. 911 Call

On December 16, 2015, at approximately 11:50 a.m., Bryant Duncan went into the 7-Eleven convenience store on the corner of Carmen Drive and Daily Drive in Camarillo. He asked the store clerk if he could borrow the business phone. Duncan had been to this convenience store about 10 times previously and borrowed the business phone on several prior occasions. The clerk handed the business cordless phone to Duncan. Duncan exited the 7-Eleven carrying the phone and called 911. He began speaking with the 911 dispatcher at approximately 11:52 a.m.

Duncan told the dispatcher he was going to rob the 7-Eleven store located at 255 Carmen Drive. He added, "I need cops over here to kill me." The dispatcher asked Duncan if he was trying to create a suicide-by-cop situation. Duncan replied, "Well, I just need a gun to get this done with. Please." When the dispatcher asked Duncan what he planned would happen when officers arrived, Duncan said, "Me to die." He added, "Think about it, man." When asked if he was going to threaten the officers and make them take action, Duncan said, "No. Look, there's a cop right here. I'm going to go get it done."

During the 911 call, Duncan could be heard riding his skateboard as he approached Deputy Mah's patrol vehicle. The line with the 911 operator remained open as Duncan approached Deputy Mah.

Deputy Mah told Duncan, "Stop it." Deputy Mah said, "Get out of my way." Duncan replied, "I need you to kill me, man." He added, "I'm not going to stop till you kill me." Duncan asked Deputy Mah repeatedly to shoot him. A sound of a car door opening could

be heard at this point in the call. Deputy Mah told Duncan to “close the door.” Deputy Mah repeated this command several times and also told Duncan to put the knife down.

Duncan told Deputy Mah, “I’m going to cut myself. No, hold on, man. Just kill me. Just kill me, please. Why can’t you just kill me? Please. Please, kill me. Stop. Just kill me.” Deputy Mah ordered Duncan to put down the knife. Duncan responded, “No. I’m not going to kill you. Yes, yes, shoot me. Shoot me. What are you doing? Shoot me. Shoot me in the head. What are you doing?” Deputy Mah repeatedly told Duncan to put down the knife and get down on the ground. Duncan repeatedly said, “Kill me.”

The recording of the 911 call ends at this point. Pieces of a broken cordless phone, later identified as the phone Duncan borrowed from 7-Eleven, were found on the sidewalk on the east side of Carmen Drive, along the path Duncan pursued Deputy Mah. It appears Duncan dropped or threw the phone at some point during the incident, causing the phone to break, thereby ending the 911 call.

(Click [here](#) to hear recording of 911 call. Click [here](#) to read transcript of 911 call.)

#### B. Cellular Phone Video of the Incident

A witness, Albert Alonzo, captured a substantial portion of the altercation on his cellular phone. He was in the front passenger seat of a vehicle stopped at a red light at the intersection of Carmen Drive and Daily Drive. The vehicle was going southbound on Carmen Drive and was stopped in the left turn lane. At the beginning of the video recording, the windows to the vehicle were rolled up and music was playing, such that much of what was said by Deputy Mah and Duncan could not be heard in the video. However, the video captured approximately 47 seconds of footage.

At the beginning of the video, Deputy Mah and Duncan are seen standing on the sidewalk on the northeast corner of Daily Drive and Carmen Drive. Deputy Mah was facing southeast and Duncan was facing northwest. The two men were 10 to 20 feet apart.



Duncan was holding a black phone in his left hand. In his right hand, Duncan was holding a knife with the blade pointed up. Deputy Mah's marked patrol vehicle was parked along the east curb about 10 to 20 feet from Deputy Mah.

For approximately four seconds, Duncan held the knife in his right hand with the blade pointed towards Deputy Mah. During this same period of time, Deputy Mah unholstered his firearm and held it down to his side in his right hand. After about four seconds, Duncan took several steps towards Deputy Mah, forcing Deputy Mah to walk backwards. Duncan was able to close the distance between himself and Deputy Mah because his forward strides were longer than Deputy Mah's backwards steps. For about four seconds, Deputy Mah and Duncan are not seen on the video as they passed behind the patrol vehicle. When they reemerged on the other side of the vehicle, Deputy Mah was quickly moving backwards with his firearm pointed at an angle towards Duncan's feet. Duncan ran towards Deputy Mah and Deputy Mah pointed the firearm at Duncan. The two men were four to seven feet apart. Duncan then leaned forward and took several long strides towards Deputy Mah while holding the knife in his hand. Deputy Mah continued backing up. Duncan stopped momentarily and then took a few steps back. Deputy Mah took a few steps forward. Deputy Mah used his radio to inform dispatch of the situation.

At approximately this point in the video, the occupants in the vehicle turned off the music, such that some of Deputy Mah's statements can be heard. Deputy Mah told Duncan to get on the ground and continued pointing his firearm at Duncan. Duncan leaned forward and ran towards Deputy Mah. Duncan held the knife with his right hand extended behind him and to the side, as though he was getting ready to thrust it forward. Deputy Mah took several steps backwards and fired one round from his weapon. Duncan was two to six feet from Deputy Mah when Deputy Mah fired the first shot. The first shot was fired at about 28 seconds into the video recording. Deputy Mah kept moving backwards after firing the first shot. Duncan leaned forward, bending at the waist, and kept moving towards Deputy Mah. After a brief pause, Deputy Mah fired two more rounds at a distance of two to four feet. Deputy Mah continued moving backwards and Duncan advanced quickly, still holding the knife in his hand. Deputy Mah fired two

additional shots, yet Duncan continued moving towards him. Deputy Mah fired a sixth and final round at a distance of two to four feet from Duncan.

Deputy Mah accidentally stepped off the curb as he was retreating from Duncan's attack. The deputy fell backwards. His back landed on the edge of the curb and gutter. He rolled onto his side and knees and quickly stood up. As Deputy Mah fell, Duncan took several steps forward before collapsing and falling into the street. Deputy Mah stood near Duncan with his firearm drawn as Duncan lay on the asphalt. No additional shots were fired.

The video footage shows that Deputy Mah waited approximately 24 seconds from the time Duncan began advancing on him with a knife to the time Deputy Mah fired the first shot.

(Click [here](#) to view the cellular phone video footage.)

### C. Witness Statements

Numerous individuals were interviewed, including the involved officers, emergency medical personnel, and civilian witnesses. Summaries of the most pertinent witness statements are set forth below.

#### 1. Deputy Leon Mah

Deputy Leon Mah submitted to a voluntary interview with detectives regarding the shooting. Detective Jose Lopez, who interviewed Deputy Mah, noticed that Deputy Mah was bleeding from the knuckles on his right hand and there was visible damage to his uniform. Deputy Mah attributed the injury and the damage to his uniform to the fall he suffered during the incident. It was later determined that Deputy Mah also suffered injuries to his right forearm, elbow, and knee during the fall.

Deputy Mah was working a 12-hour overtime patrol shift in Camarillo on December 16, 2015, when the shooting occurred. However, he got at least six hours of sleep prior to starting his shift. His shift was uneventful prior to his contact with Duncan. Deputy Mah was wearing his full sheriff's uniform that day and was driving a marked patrol vehicle. He was armed with his department-issued Sig Saur .40 caliber semiautomatic handgun and a Taser. Deputy Mah said he was in the process of responding to an alarm call when he stopped for a red light at the intersection of Daily Drive and Carmen Drive. He heard a dispatch call over the radio regarding a suspicious subject at his location. Deputy Mah looked up to see Duncan walking eastbound in the crosswalk towards Deputy Mah's patrol unit.

Deputy Mah watched Duncan approach his vehicle and stand in front of it. Deputy Mah told Duncan to walk to the side of the road and Duncan did so. Deputy Mah activated his emergency lights and made a U-turn. Deputy Mah parked his patrol unit on the east curb of Carmen Drive with the patrol unit facing north. He placed the transmission in park, which caused all the vehicle doors to unlock. Duncan opened the front passenger door to the patrol unit and Deputy Mah yelled at Duncan several times to close the door. Deputy Mah got out of his vehicle and walked around to make contact with Duncan. Based on Duncan's behavior, Deputy Mah felt Duncan was unpredictable. Deputy Mah removed his Taser as he got out of his patrol vehicle. He approached Duncan with his Taser at the ready. Duncan told Deputy Mah repeatedly, "Kill me." Deputy Mah looked back to check the traffic on the roadway. When he turned back towards Duncan, he saw that Duncan was holding a knife in his right hand. Deputy Mah estimated the blade of the knife was six to seven inches in length. Deputy Mah noted that Duncan appeared excited and "amped up." Duncan had the knife raised in front of his chest while saying, "Shoot me" and "Kill me." Deputy Mah transitioned from his Taser to his handgun upon seeing Duncan armed with a knife. Deputy Mah said he made this decision because the Taser is unpredictable and he felt that Duncan might try to stab him or someone else. Deputy Mah said he feared for his life at this moment and wanted to ensure that he made it home to his family.

At about this point in time, Deputy Mah was able to advise dispatch that Duncan was armed with a knife. Deputy Mah had been unable to notify dispatch previously due to how quickly Duncan approached him and how quickly the situation evolved.

Deputy Mah held his firearm at the ready while yelling at Duncan repeatedly to drop the knife. Duncan ignored Deputy Mah's commands and advanced on him. Deputy Mah had to walk backwards to avoid being stabbed. Duncan continued walking towards Deputy Mah and closing the distance between them. Deputy Mah again yelled commands at Duncan to drop the knife but Duncan did not comply. At some point, Duncan momentarily stopped walking forward so Deputy Mah stopped as well. Duncan walked back a short distance so Deputy Mah walked forward a short distance, concerned that Duncan posed a threat to public safety. Duncan then began walking rapidly towards Deputy Mah while still holding the knife in his hand. Duncan was gaining ground on Deputy Mah. Fearing for his life, Deputy Mah began firing his gun while walking backwards. Deputy Mah recalled firing his weapon four or five times. Deputy Mah recalled that Duncan continued coming at him even after Deputy Mah fired the first few rounds. Deputy Mah estimated Duncan got to within one foot of him during the shooting.

Deputy Mah recalled tripping on the curb and falling on his back. He rolled over and stood up. Just before he fell, he saw that Duncan was still standing and was walking towards him. Deputy Mah was worried that Duncan was going to jump on top of him and stab him. Deputy Mah got to his feet to see Duncan falling to the ground. Deputy Mah immediately called dispatch to notify them of the shooting.

Deputy Mah kept his weapon drawn on Duncan but stood at a safe distance. Duncan did not get up and no additional shots were fired. Deputy Chris Loes arrived to assist Deputy Mah after Duncan was down. Deputy Mah approached Duncan along with Deputy Loes. In order to ensure their safety, they decided to handcuff Duncan. During the handcuffing process, Deputy Mah saw that Duncan still had the knife in his right hand. Deputy Mah

kicked the knife away from Duncan. Deputy Loes subsequently kicked the knife further away.

During his interview, Deputy Mah informed detectives that, upon seeing Duncan initially approach his patrol vehicle on December 16, 2015, Deputy Mah recognized Duncan from a prior contact about two weeks earlier. During the prior contact, Deputy Mah pursued Duncan following a shoplift Duncan committed. Deputy Mah pursued Duncan first in his patrol vehicle and then on foot. Deputy Mah ultimately took Duncan to the ground during the foot pursuit and handcuffed him without further incident.

## 2. Albert Alonzo

Albert Alonzo was a passenger in his coworker's vehicle. The vehicle was on Carmen Drive stopped for a red light. The vehicle was in the left turn lane preparing to make a left turn onto Daily Drive when the light turned green. Alonzo looked over and saw Duncan open the front passenger door of Deputy Mah's vehicle. Alonzo estimated Duncan stood by the open door for about 10 seconds. He subsequently saw Duncan pull out what appeared to be a kitchen knife. Alonzo began filming the incident with his cellular phone. He saw Duncan approach Deputy Mah with the knife in hand as Deputy Mah backed up. Alonzo heard Deputy Mah order Duncan to stand down or stop. Duncan began charging at Deputy Mah and Deputy Mah began firing shots. Alonzo estimated he heard five or six gunshots. Alonzo thought Duncan was about 1½ to 2 feet from the deputy when the deputy fired shots.

When asked why he filmed the incident, Alonzo said, "I just saw the videos you see on social media and stuff. I mean, you never know if the officer did something wrong or the suspect did something wrong. And this time it was the suspect was wrong. I thought he was wrong. Um, he was charging towards him with a knife." Alonzo said he felt Duncan's actions were a threat to the deputy's life and Alonzo felt the deputy fired in self-defense.

### 3. Chyanne Makanalani

Chyanne Makanalani was driving the vehicle in which Albert Alonzo was a passenger. She said she was stopped in the left turn lane on Carmen Drive waiting to turn left onto Daily Drive. She looked over and saw Duncan opening the front passenger door to Deputy Mah's patrol vehicle. She watched Duncan and Deputy Mah talking for a moment. She then saw Duncan pull a knife from under his shirt near his front waistband. She heard Deputy Mah tell Duncan to get on the ground and to put down the weapon but Duncan did not comply. Duncan started to run at Deputy Mah. Makanalani recalled Deputy Mah switching from his Taser to his gun. She saw Duncan run at Deputy Mah and heard Deputy Mah fire shots. She thought Duncan was only a couple of feet from Deputy Mah when Deputy Mah fired shots. Makanalani said, "From what I've seen, the officer was defending himself." She thought Duncan got close enough to Deputy Mah to stab him.

### 4. David Buckland

David Buckland was in a vehicle in the number two lane heading southbound on Carmen Drive. He was stopped for a red light at the Daily Drive intersection. He saw Duncan armed with a knife. Buckland described Duncan holding the knife close to his body with the blade pointed up. Buckland saw Duncan move towards Deputy Mah holding the knife. Buckland heard Deputy Mah yelling commands like, "Drop the knife!" However, Duncan ignored those commands and continued walking towards the deputy. Buckland estimated the deputy fired six or seven shots.

### 5. Thomas Burkhart

Thomas Burkhart was working at the USA gas station located on the northwest corner of the Carmen-Daily intersection. He was working as a cashier when he heard a gunshot. He looked out the window and saw Deputy Mah and Duncan on the east sidewalk. He saw Duncan charge at the deputy. Burkhart noted Duncan was moving faster than

Deputy Mah and was gaining on him. Burkhart heard the deputy fire shots as Duncan continued advancing. Burkhart felt “the officer had no choice.”

#### 6. James Dreiling

James Dreiling was driving southbound on Carmen Drive. He was stopped in the left turn lane waiting to turn onto Daily Drive. He saw Duncan and Deputy Mah standing near the corner of the intersection. Dreiling saw Duncan charge at Deputy Mah with a knife in hand as Deputy Mah backed up. Dreiling saw Duncan stop momentarily and take a few steps back. Deputy Mah took a few steps forward. Duncan then charged at Deputy Mah with the knife in hand. The witness described Duncan’s movement as “walking rapidly, almost a trot towards the officer.” According to Dreiling, Duncan was gaining ground on Deputy Mah. Dreiling estimated that Duncan got to within two or three feet of Deputy Mah when Deputy Mah fired shots. Dreiling described Duncan as lunging towards Deputy Mah with his arm outstretched, such that the knife was only about a foot away from Deputy Mah when he fired shots. The witness said he would not have given Duncan as much of a chance as the deputy did and the witness felt the shooting was justified.

#### 7. Robert Evans

Robert Evans was stopped in his vehicle on Carmen Drive at the Daily Drive intersection. He was heading southbound on Carmen Drive and was stopped in the number one lane. He could see Duncan holding something in his left hand, which the witness thought might be a cellular phone. He could not see Duncan’s right hand. He saw the deputy back up as Duncan moved towards the deputy. Evans thought Deputy Mah showed a lot of restraint in terms of going back and forth with Duncan.

#### 8. Francisco Hermosillo

Francisco Hermosillo was stopped in his vehicle at the intersection of Carmen Drive and Daily Drive. Hermosillo saw Duncan put his hands on the hood of Deputy Mah's patrol vehicle. Hermosillo saw Deputy Mah exit his vehicle and contact Duncan. The witness turned into the 7-Eleven parking lot and went to a gas pump. When he looked over again, he saw Duncan had a shiny object in his hand which the witness thought was probably a knife. Hermosillo heard Deputy Mah tell Duncan to put the knife down. Duncan walked towards Deputy Mah with the knife in hand and Deputy Mah fired shots.

#### 9. Nancy Johnson

Nancy Johnson was driving her vehicle southbound on Carmen Drive. She was stopped for a red light in the left lane at the Carmen-Daily intersection. She saw Deputy Mah with his gun drawn and Duncan with a knife. She heard the deputy yell multiple times, "Drop the knife!" She saw Duncan lunge at Deputy Mah and run towards him. She saw Deputy Mah fire shots at Duncan. Johnson said she believed that if the deputy had not shot Duncan, the deputy would probably be dead.

#### 10. Douglas Messamore

Douglas Messamore was a passenger in a vehicle driving northbound on Carmen Drive. The vehicle was stopped at a red light just south of Daily Drive. Messamore saw Duncan holding a knife in his hand. Messamore heard Deputy Mah tell Duncan not to get any closer. Duncan advanced on Deputy Mah and was getting closer and closer. According to the witness, Duncan charged at Deputy Mah and Deputy Mah fired five or six shots. The witness felt Duncan was a threat to Deputy Mah because Duncan kept charging.



### 11. Carrie Roske

Carrie Roske was stopped in the left turn lane for northbound Carmen Drive waiting to turn onto Daily Drive. She saw Duncan pull out a knife and Deputy Mah pull out a gun. She said Duncan appeared erratic and was not listening to the deputy. Deputy Mah told Duncan to stay back but Duncan charged at Deputy Mah with the knife. Deputy Mah subsequently fired shots. The witness described Duncan as having his arm outstretched with the knife in his hand as he charged at the deputy.

### 12. Wayne Scott

Wayne Scott was driving northbound on Carmen Drive. He was in the right turn lane on Carmen Drive stopped at the Daily Drive intersection. He saw Duncan pull out a knife. He heard Deputy Mah tell Duncan, "Drop the knife. Drop the knife." Scott saw Deputy Mah back up as Duncan lunged at Deputy Mah with the knife. Scott said he felt the deputy was defending his life. He said, "It's like the guy was hell bent on stabbing the cop." Scott added, "I would not want to be the cop, because I mean I would've done the same thing."

### 13. Jared Waite

Jared Waite was driving his vehicle on Carmen Drive. He was stopped for a red light at the Carmen-Daily intersection. He saw Duncan open the passenger door of the patrol vehicle. Waite saw Deputy Mah walk around the vehicle and contact Duncan. The witness saw Duncan armed with a knife. Duncan walked towards Deputy Mah and Deputy Mah backed away. Waite lost sight of Duncan and Deputy Mah as they went behind the patrol unit. Waite heard six shots fired. Waite saw Deputy Mah fall and then Duncan fall. The witness felt the deputy was correct to fire shots because he felt the deputy would have been stabbed if he had not discharged his gun. Waite estimated Duncan was within three feet of Deputy Mah when he charged at Deputy Mah with the knife.

#### 14. Jason Lafferty

Jason Lafferty was a firefighter and first responder. He arrived at the location and attempted to render aid to Duncan. He said Duncan was nonresponsive the entire time. Lafferty said he and other emergency personnel continued attempting to render aid to Duncan on the way to the hospital but Duncan never regained consciousness. Other emergency medical personnel attempted to provide forced air and checked Duncan's pulse. However, Duncan had no pulse and remained nonresponsive to treatment.

#### 15. Jonathan Foote

Jonathan Foote became acquainted with Duncan in the weeks prior to December 16, 2015. Foote stated that Duncan appeared depressed shortly before his death. Duncan told Foote he was having trouble with family and friends. Duncan mentioned that he had moved with his family to Idaho for a short time but returned to Camarillo because he did not like Idaho. On December 12, 2015, Foote called 211<sup>1</sup> on Duncan's behalf out of a desire to provide Duncan with possible counseling services. Foote put Duncan on the phone with the 211 operator. After speaking to the operator for about five minutes, Duncan told Foote he felt he no longer needed help. Duncan sent Foote several messages via TextNow.com on December 16, 2015. In these messages, Duncan mentioned to Foote that he wanted to die on Foote's farm. Duncan wrote that he could not kill himself because he loved his father too much. However, Duncan also expressed feelings that he had ruined his life to the point at which there was no going back. When interviewed, Foote expressed a desire to let the deputy who shot Duncan know that it was not the deputy's fault because Duncan was determined to die.

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<sup>1</sup> In California, a caller may dial 2-1-1 which is a free phone number that connects the caller to existing health and human services programs.

#### 16. Troy Duncan

Troy Duncan is Bryant Duncan's father. Troy Duncan reported that he had moved to Idaho approximately four or five months prior to the shooting and Bryant had moved with him. However, Bryant did not like Idaho and subsequently moved back to California. Troy Duncan told investigators Bryant's mother had passed away when Bryant was very young and Bryant had always had trouble coming to terms with his mother's death.

#### 17. Sarah Deremer

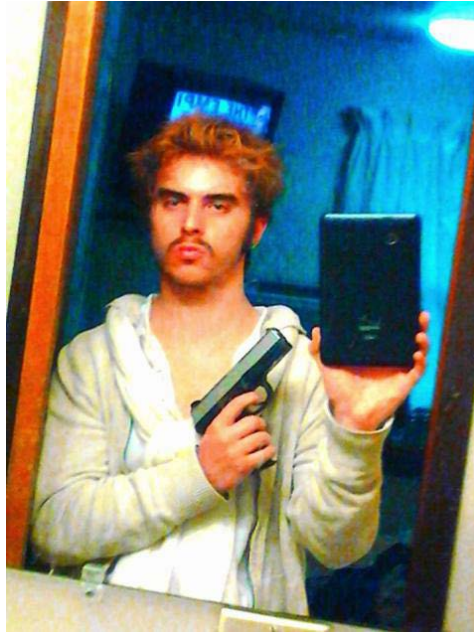
Sarah Deremer is Bryant Duncan's stepsister. Deremer lived in Idaho at the time of Duncan's death. She said she last spoke to Duncan about a week prior to the shooting but the only topic discussed was Duncan requesting their parents' phone numbers. Deremer told detectives that she and her stepbrother were not very close. However, she was aware Duncan had a drug problem, specifically that he used methamphetamine. She also reported that she knew Duncan to carry weapons, such as pocket knives. When asked about Duncan's mental state, Deremer indicated that she was not aware of an history of mental illness treatment or diagnosis and did not believe he had ever actually sought or received treatment. She discussed him as "delusional" and when asked for an example, Deremer indicated that Duncan was interested in becoming an actor and thought he would be nominated for a big award in the movie industry.

#### 18. Terrell Duncan

Terrell Duncan is Bryant Duncan's older brother. Terrell Duncan lived in Oregon at the time of his brother's death. Terrell had only seen his brother five or six times in the span of the past ten years. Terrell said Bryant started doing drugs in high school and had been using methamphetamine and marijuana for some time.

D. Duncan's Facebook Account

During a search of Duncan's Facebook account, detectives located photographs of Duncan posing with a handgun, including the photograph depicted below.



E. Investigation of Mental Health History

Detectives from the Ventura County Sheriff's Office investigated whether Duncan suffered from any diagnosed mental illness. The investigation ultimately revealed no evidence that Duncan was diagnosed with any mental illness.

III.

PHYSICAL EVIDENCE

A. Shooting Scene

The shooting scene consisted of the east sidewalk bordering Carmen Drive, as well as the northbound traffic lanes of Carmen Drive, just north of the Daily Drive intersection.

Deputy Mah's patrol vehicle was parked along the eastside curb of Carmen Drive just north of the Daily Drive intersection, as shown in the photograph below.



Duncan's skateboard was located near the back of Deputy Mah's patrol vehicle, as depicted in the photograph below, with the rear bumper of the patrol vehicle visible in the top of the photograph.



Various items of physical evidence were located at the scene and collected. These items included the knife Duncan wielded during the incident<sup>2</sup>, six spent shell casings, a bullet, blood droplets, and broken pieces of the cordless phone Duncan used to call 911.

The knife Duncan brandished is depicted in the photographs below as it was located by detectives who responded to the scene and collected evidence.



Based on measurements taken at the scene and the location of various items of evidence, deputies were able to determine that Duncan advanced on Deputy Mah over a distance of approximately 106 feet as Deputy Mah retreated and ultimately fired shots.

The red line and arrow in the aerial photograph below depicts the approximate path Duncan took as he advanced on Deputy Mah with a knife in hand from just south of Deputy Mah's patrol vehicle to the point at which Duncan fell to the ground. The firetruck and medical supply bags seen in the roadway in the photograph were not present at the time of the incident.

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<sup>2</sup> No useable prints were lifted from the knife.





## B. Autopsy

An autopsy was performed on Duncan's body on December 17, 2015, by Dr. Ann Bucholtz, a forensic pathologist and former Medical Examiner for the Ventura County Medical Examiner's Office. Dr. Bucholtz located a total of seven gunshot wounds to Duncan's body, two of which appear to have been caused by a single bullet. Dr. Bucholtz identified the following gunshot wounds to Duncan's body and corresponding internal injuries:

- 1) a gunshot wound to Duncan's upper mid back resulting in lacerations of the lung and rib fractures
- 2) a gunshot wound to Duncan's left upper back resulting in lacerations of the lung and rib fractures
- 3) a gunshot wound to Duncan's left shoulder resulting subcutaneous injury to his upper back
- 4) a gunshot wound to Duncan's left forearm, which Dr. Bucholtz determined might be a reentry from another gunshot wound, resulting in subcutaneous injury without fractures
- 5) a gunshot wound to Duncan's left hand resulting in superficial lacerations
- 6) a gunshot wound to Duncan's left armpit resulting in lacerations of the lung, heart, and liver

- 7) a gunshot wound to Duncan's left chest area resulting in lacerations of the lung, aorta, diaphragm and bowel.

Four bullets were recovered from Duncan's body during the course of the autopsy. For the bullets which were not recovered from within Duncan's body, there were corresponding exit wounds, indicating the bullets passed through Duncan's body.

In addition to the four expended bullets discovered during the autopsy, two additional bullets were located. One bullet was found at the shooting scene and another bullet was located by medical staff on the exterior surface of Duncan's abdomen. In total, six bullets recovered. These six bullets combined with the six shell casings found at the shooting scene, indicate that Deputy Mah fired a total of six shots during the incident.

Dr. Bucholtz concluded that Duncan died from multiple gunshot wounds and that the killing was a homicide, meaning a death at the hands of another.

#### C. Toxicology Report

Samples of Duncan's blood were collected during the autopsy performed by Dr. Bucholtz. Those samples were submitted for testing to NMS Labs, located in Pennsylvania. The test results revealed that Duncan had Delta 9-Carboxy Tetrahydrocannabinol and Delta 9 Tetrahydrocannabinol, the principle psychoactive ingredients of marijuana/hashish, in his blood at the time of his death.



## IV.

### LEGAL PRINCIPLES

#### A. Law of Homicide and Self-Defense

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide encompasses murder and manslaughter, which are unlawful, and acts of excusable and justifiable homicide, which are lawful.

Homicide is justifiable when committed by any person “resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” (Pen. Code § 197(1).)

CALCRIM 505 sets forth the specific jury instructions on self-defense. It provides that a person is not guilty of murder or manslaughter if 1) that person “reasonably believed that [the person] [or] someone else . . . was in imminent danger of being killed or suffering great bodily injury”; 2) that person “reasonably believed that the immediate use of deadly force was necessary to defend against that danger”; and 3) that person “used no more force than was reasonably necessary to defend against that danger.” (*Judicial Council of California Criminal Jury Instructions (October 2016 Update), Calcrim 505.*)

CALCRIM 505 further provides that in deciding whether that person’s “beliefs were reasonable, consider all the circumstances as they were known to and appeared to [that person] and consider what a reasonable person in a similar situation with similar knowledge would have believed. If [that person]’s beliefs were reasonable, the danger does not need to have actually existed.” It also provides that “[a person] is not required

to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger has passed. This is so even if safety could have been achieved by retreating.” (*Ibid.*)

A killing by a peace officer is justifiable when it was “necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty” or “when necessarily committed in arresting persons charged with [a] felony, and who are fleeing from justice or resisting such arrest.” (Pen. Code § 196.)

Police officers have a duty “to maintain peace and security” and “to protect citizens from harm.” (*Batts v. Superior Court* (1972) 23 Cal.App.3d 435, 438.) A police officer may use deadly force when the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. (*Graham v. Conner* (1989) 490 U.S. 386, 396-397.) Reasonableness includes “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.” (*Ibid.*)

Under the Fourth Amendment, police are “not required to use the least intrusive degree of force possible” but may use only such force as is objectively reasonable under the circumstances. (*Forrester v. City of San Diego* (9th Cir. 1994) 25 F.3d 804, 807.) An officer’s use of deadly force is reasonable only 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.” (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) Furthermore, “if police officers are justified in firing at a suspect in order to end a severe threat to public safety,

the officers need not stop shooting until the threat has ended.” (*Plumhoff v. Rickard* (2014) 134 S.Ct. 2012, 2022.)

“The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene. It is also highly deferential to the police officer’s need to protect himself and others.” (*Martinez v. County of L.A.* (1996) 47 Cal.App.4th 334, 343 (quoting *Graham* 490 U.S. at 396-397).) The reasonableness test requires careful attention to the facts and circumstances of each particular case, including: (1) “the severity of the crime at issue”; (2) “whether the suspect poses an immediate threat to the safety of the officers or others”; and (3) “whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” (*Graham*, 490 U.S. at 396.)

#### B. Bryant Duncan’s Criminal Conduct

Duncan engaged in felony and misdemeanor criminal conduct immediately prior to the shooting. Had he survived, he could have been charged with the commission of the following crimes:

- Attempted Murder in violation of Penal Code section 664/187(a)
- Assault with a Deadly Weapon in violation of Penal Code section 245(a)(1)
- Assault with a Deadly Weapon on a Peace Officer in violation of Penal Code section 245(c)
- Brandishing a Deadly Weapon in violation of Penal Code section 417(a)(1)
- Resisting an Executive Officer in violation of Penal Code section 69
- Resisting, Obstructing, or Delaying a Peace Officer in violation of Penal Code section 148(a)(1).

V.  
ANALYSIS

On December 16, 2015, Bryant Duncan repeatedly expressed a desire to die in the messages he sent to Jonathan Foote, in the statements he made to the 911 dispatcher, and in the statements he made to Deputy Mah. Duncan told Jonathan Foote via text message that he wanted to die, however, also wrote that he could not kill himself because he loved his father too much. It appears that, in lieu of taking his own life, Duncan decided to create a scenario whereby he would behave in a threatening manner towards an armed peace officer in order to provoke a lethal response with the goal to commit suicide. When Duncan called 911, he informed the dispatcher he was about to commit a violent crime, specifically a robbery of the 7-Eleven convenience store. Duncan's statement ensured that responding peace officers would perceive him as a potential threat. Duncan further specifically told the dispatcher he needed officers there to kill him. When asked if he was trying to create a suicide-by-cop situation, Duncan replied, "I need cops over here to kill me...I need a gun to get this done with."

When Duncan observed Deputy Mah's patrol vehicle, he told the dispatcher, "There's a cop right here. I'm going to get it done." Duncan then approached Deputy Mah's patrol vehicle on his skateboard. Duncan forced Deputy Mah to confront him when Duncan opened the passenger door to Deputy Mah's patrol vehicle. Duncan told Deputy Mah, "You need to kill me" and "I'm not going to stop until you kill me." The latter statement would cause a reasonable officer in Deputy Mah's position to conclude that Duncan

intended to take any action necessary, up to and including killing the officer, if the officer did not use deadly force against him.

Duncan brandished a knife at Deputy Mah in a threatening manner, holding the knife in front of his body with the blade pointed up. Duncan proceeded to move towards Deputy Mah with the knife in hand, forcing Deputy Mah to walk backwards in order to avoid being stabbed. Duncan advanced on Deputy Mah, closing the distance between the deputy and himself while being armed with a weapon that could readily inflict great bodily injury or death. Duncan ignored Deputy Mah's repeated commands to put down the knife and get on the ground. After stopping briefly and taking a few steps backwards, Duncan charged at Deputy Mah, lunging towards the deputy with the knife. Witnesses indicated that Duncan got to within a few feet of Deputy Mah before Deputy Mah fired the first shot. Given the proximity between the two men, Duncan could easily have stabbed Deputy Mah, causing great bodily injury or death.

After the first shot was fired, Duncan continued moving towards Deputy Mah, still armed with the knife. Deputy Mah fired a total of six shots as Duncan came at him, knife in hand. Even after all six shots had been fired, Duncan took several additional steps towards Deputy Mah before collapsing to the ground.

Duncan's actions on December 16, 2015, constituted a number of crimes, including attempted murder, in violation of Penal Code section 664/187(a), assault with a deadly weapon, a violation of Penal Code section 245(a)(1), assault with a deadly weapon on a peace officer, in violation of Penal Code section 245(c), resisting an executive officer, a

violation of Penal Code section 69, and resisting, obstructing, or delaying a peace officer, a violation of Penal Code section 148(a)(1).

Deputy Mah gave Duncan multiple opportunities to cease his attack before Deputy Mah resorted to lethal force. Duncan ignored Deputy Mah's repeated commands to drop the knife and get on the ground. Deputy Mah backed up a substantial distance, at increased risk to his own safety, while Duncan came towards him with the knife. When Duncan quickly charged and lunged at Deputy Mah with the knife, Deputy Mah honestly and reasonably believed that Duncan's actions posed a significant threat of death or serious bodily injury and that the immediate use of deadly force was necessary to defend against that danger. Many percipient witnesses concluded, based on their own observations of the incident, that Deputy Mah's use of force appeared reasonable under the circumstances.

Not only was Deputy Mah's use of deadly force reasonable under the circumstances, the evidence shows he used no more force than was reasonably necessary to defend against the danger Duncan posed. Deputy Mah fired six shots as Duncan continued moving towards him armed with a knife. In total, Duncan suffered seven gunshot wounds, two of which were apparently caused by one bullet. While the autopsy revealed that several of the gunshot wounds were to Duncan's back, the cellular phone video footage confirms that Deputy Mah never fired at Duncan when Duncan's back was turned. Rather, the gunshot wounds to Duncan's shoulder and upper back are consistent with Duncan

lunging at Deputy Mah while hunched forward, as seen on the video footage. Duncan's posture at that moment exposed his upper back and shoulder to forward fire.

The law provides that if the police officer is justified in firing at a suspect in order to end a severe threat to public safety, the officer need not stop shooting until the threat has ended. Here, Duncan continued to pose a threat during the time all six shots were fired. Duncan moved towards Deputy Mah with knife in hand as all shots were fired and even took several steps forward after the final shot was discharged. After Duncan collapsed and fell to the ground, Deputy Mah fired no further shots. To the contrary, he immediately notified dispatch of the shooting so that emergency aid could be rendered to Duncan as quickly as possible.

## VI.

### CONCLUSION

It is the conclusion of the District Attorney that:

- A. At the time Deputy Leon Mah fired his handgun at Bryant Duncan, Deputy Mah honestly and reasonably believed that he was in imminent threat of death or great bodily injury.
- B. Deputy Leon Mah honestly and reasonably believed that the immediate use of deadly force was necessary to defend himself against the danger posed by Bryant Duncan at the time Deputy Mah fired his weapon.
- C. Deputy Leon Mah used no more force than was reasonably necessary to defend against the apparent danger posed by Bryant Duncan.
- D. The fatal shooting of Bryant Duncan by Deputy Leon Mah was a justifiable homicide.