

**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA**

December 30, 2010

**REPORT ON THE DECEMBER 23, 2009
PURSUIT AND OFFICER INVOLVED SHOOTING
DEATH OF SILAS CARPENTER BY
OFFICERS OF THE OXNARD POLICE DEPARTMENT**

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TABLE OF CONTENTS

INTRODUCTION.....3

STATEMENT OF FACTS.....4

 Silas Carpenter’s Background.....4

 Carpenter’s Erratic Behavior Prior to the Police Pursuit7

 The Pursuit by Oxnard Police Department10

 Events in the McDonald’s Parking Lot.....15

WITNESSES STATEMENTS18

 Summary of Civilian Witness Statements18

 Statement of Officer Ramiro Holguin.....19

 Statement of Officer William Swisher.....22

 Statement of Officer Terry Dobrosky27

 Statement of Detective Edward Baldwin.....31

 Statement of Officer Michael Johnson34

 Statement of Officer Rocky Marquez39

 Statement of Officer Kevin Gormley.....46

PHYSICAL EVIDENCE/CRIME SCENE.....52

 Autopsy of Silas Carpenter52

 Firearms Analysis53

LEGAL PRINCIPLES54

ANALYSIS55

CONCLUSION56

INTRODUCTION

On December 23, 2009, Oxnard resident Silas Carpenter was driving a 25,000 pound commercial propane truck belonging to his employer. The truck was loaded with approximately 100 propane canisters of various sizes. Likely suffering from the effects of long-standing mental illness, Carpenter began behaving strangely that morning, while driving the truck at dangerous speeds. His behavior caused bystanders to call both 911 and the owner of the propane company, whose number was displayed on the truck. Oxnard Police attempted to affect a traffic stop, but Carpenter failed to yield. A pursuit ensued during which Carpenter collided with several civilian vehicles and attempted to strike an Oxnard motor officer. Oxnard police officers followed Carpenter into a busy commercial parking lot at the northwest corner of Fifth Street and Ventura Road where Carpenter intentionally crashed the propane truck into an occupied civilian vehicle and two police cars. Six Oxnard Police officers fired shots at Carpenter in an attempt to stop the truck as he plowed through the highly populated parking lot, ultimately killing Carpenter.

The Oxnard Police Department conducted an investigation of the shooting and provided the reports of the investigation to the District Attorney's Office in May 2010. The District Attorney's Office received the final ballistics analysis in November 2010. The District Attorney's investigation and review was conducted by Senior Deputy District Attorney Maeve J. Fox and Senior Investigator Danny Miller. The District Attorney's review included examination of the following: approximately 1,100 pages of reports and supporting documents, including over 170 individual reports from the Oxnard Police Department, California Highway Patrol and Ventura County Medical Examiner's Office; audio recordings of the 911 and dispatch traffic

recordings from before, during and after the pursuit; over 100 interviews of witnesses including all the officers who were involved in the pursuit and/or the follow-up investigation and each of the officers who fired their weapons; and over 500 scene and event reconstruction photographs.

The purpose of the District Attorney's investigation was to determine whether the law enforcement officers' use of deadly force was lawful and whether the resulting death of Silas Carpenter was a justifiable homicide. After a complete review of all of the evidence, it is the conclusion of the District Attorney that given Carpenter's deadly course of action that morning, law enforcement officers acted lawfully when they shot and killed him. For that reason, the death of Silas Carpenter is determined to be a justifiable homicide.

STATEMENT OF FACTS

Silas Carpenter's Background

Although the District Attorney's office did not have access to Silas Carpenter's mental health records, the anecdotal evidence reviewed, which included crime reports, interviews with family members and past statements by Carpenter himself, makes it abundantly clear that he suffered from a serious mental disorder; possibly bi-polar disorder. Additionally, Carpenter had an equally long history of illegal drug abuse (primarily crack cocaine) and severe alcoholism.

This combination of mental illness and substance abuse led Carpenter to a life of crime and violence. Over a period of nearly two decades, he was repeatedly incarcerated for a variety of offenses. Between 1988 and 2005, he suffered approximately 25 separate arrests for being either drunk in public (Penal Code section 647(f)) or under the Influence of a controlled substance

(Health and Safety Code section 11550). Frequently, he was under the influence of both alcohol and cocaine.

The vast majority of these arrests were by officers of the Oxnard Police Department. During some of these arrests, several officers noted that Carpenter was observed singing to himself and talking incoherently. During all of the arrests for violating Penal Code section 647(f), Carpenter was in such an intoxicated state that he was obviously incapable of caring for himself. On occasion, he represented a clear danger to others. He was often found stumbling and mumbling in the streets of Oxnard, clutching a bottle of Jack Daniels.

Additionally, Carpenter had a history of violent assaults on others. In January 2001, he came into an Oxnard Denny's restaurant, lied down on the floor, and then punched the manager in the face when the man tried to eject him. He was convicted of misdemeanor battery. He sometimes resisted or used force on the officers during his many arrests.

In April 2005, he used a box cutter to slash the face of a taxi driver who, based on prior encounters with Carpenter, refused to give him a ride. Carpenter fled to his parents' apartment where he barricaded himself inside. The Oxnard SWAT team was called in to extract him and he surrendered after a two-hour standoff. During the standoff, he was playing loud music, breaking windows and other objects in the residence, and talking and singing loudly to himself. He made repeated requests to "make love" to Officer Wendy Geitzen, who was part of the Crisis Negotiation Team.

Just after his arrest and incarceration on the charges associated with that incident, Carpenter was deemed incompetent (due to mental illness) to stand trial and was transferred to Patton State Hospital for a period of months until his competency was restored. He was ultimately convicted of a felony violation of Penal Code section 245(A)(1) assault with a deadly weapon, as well as a felony violation of Penal Code section 69, obstructing or resisting an officer.

Carpenter was placed on felony probation and sentenced to 270 days in the Ventura County jail as a result of those convictions. During his incarceration, he was involved in a fight with a deputy, but no charges resulted. Based on the negative toxicology findings (no alcohol or illegal drugs) at the time of his death, as well as the statements of those who knew him, he may have remained drug and alcohol free since his release.

For approximately the last two years, Carpenter was employed by AAA Propane, an Oxnard company owned by brothers John, Hulon, and Robert Simpson. Hulon Simpson described Carpenter as being “the model employee,” one of the best employees that he had. Silas Carpenter was his highest paid employee at AAA Propane, and within his final few months, he was provided with full medical insurance.

When Carpenter applied for the job he was “very open” with the Simpson brothers about the fact that he was “an ex-con” with a prior drug history. All AAA employees were subject to drug testing, which is required under state regulations for truck drivers transporting hazardous materials such as propane. A third of the employees are drug tested every quarter. The company that does the drug testing is ADTS. Mr. Simpson had conversations with Carpenter in the past

about his drug history and the fact that he was no longer “using.” Carpenter told Mr. Simpson that he was never going to go back to jail for using drugs. All Carpenter’s test results were negative for drug use.

According to John and Hulon Simpson, until the day before his death, Carpenter had never had a single problem at AAA Propane. He frequently showed up to work at 7:00 in the morning, eager and ready to go to work, even though the business did not open until 7:30. However, the day prior to the shooting, Tuesday, December 22, Carpenter arrived at work about 45 minutes late and Hulon Simpson “chewed him out.”

Silas Carpenter’s Erratic Behavior Prior To The Pursuit

About 5:00 a.m. on December 23, 2009, John Morehead ran into Carpenter at Henry’s Café located at the Five Points intersection in Oxnard. Mr. Morehead had known Carpenter for many years and had previously worked with him at a local gym. He first noticed Carpenter’s car in the parking lot and then Carpenter came in and sat down next to him. He described Carpenter’s demeanor as “spun,” meaning extremely agitated. Carpenter mentioned something about having to go to the Los Angeles airport to pick up friends or relatives flying in from Boston. Carpenter ordered coffee and grits, but left without receiving his food.

Mr. Morehead had known Carpenter for many years and had observed him when he was using illegal drugs. He opined that even when Carpenter was using illegal drugs, he had never appeared as agitated as when Mr. Morehouse saw him on the morning of December 23.

Carpenter called AAA Propane at about 7:00 in the morning. He said he was having breakfast but would be at work by 7:30. He arrived on time, took his delivery truck and left on his route. That day, Carpenter was scheduled to go to Santa Paula, Valencia, and Sun Valley.

At about 9:30 a.m., John Simpson received a phone call from the an employee of G&S Shell in Moorpark, a client of AAA Propane. The caller indicated that Carpenter had come into the store, gone behind the counter, taken the keys to the propane storage area, but then left without making a delivery. This was unusual to Mr. Simpson for two reasons. First, this was one of the businesses that Carpenter was supposed to have made a delivery to the day prior and, second, taking the keys, and then driving away, was very odd.

Shortly after receiving this call, John Simpson received a second call from an anonymous citizen motorist saying that one of his drivers, a black male, was driving in a very erratic fashion, upwards of 75 mph on Madera Road in the Thousand Oaks/Simi Valley area. The caller told Mr. Simpson that they had contacted police because the driving pattern was dangerous and out of control.

Simultaneously, CHP dispatch began to receive a series of 911 calls from motorists in the Moorpark and Thousand Oaks area regarding an obviously disoriented African American man who at first was reported standing in the middle of the street on Los Angeles Avenue near Leta Yancy Road. One of the callers saw him getting into a vehicle at which time the calls changed in nature to a large truck being driven erratically along Thousand Oaks Boulevard at high speeds. CHP dispatch notified the Sheriff's Department.

Around 10:30 a.m., Gary Buckenburger was working at Trader Joe's in Newbury Park. He saw Carpenter's propane truck parked in the lot, blocking the entire driveway, which gave ingress and egress to the parking lot. Buckenburger's description of the driver fit Carpenter (black male, 6'2" wearing a purple and yellow jersey and sunglasses) as he came into the store and began walking aimlessly up and down the aisles. He was talking to himself and "rambling about nothing." Eventually, he purchased several dozen bananas and left the store. As he left the store, Carpenter tried to sell another Trader Joe's employee a tank of propane for \$15.

Sometime between 10:30 a.m. and 11:00 am, Dorothy Lavin was working at Ralph's market on Savier's Road in Oxnard. She was at her register when Carpenter entered the store, came to her register and made a small purchase. She recognized Carpenter as he had come into the store the previous Tuesday at approximately 6:00 a.m. That day, he was very jumpy. She noted he spoke extremely loud and constantly fidgeted. He appeared to her to be on some type of narcotic.

Ms. Lavin stated that on this date, Carpenter came in and again was jumpy and fidgety. His arms and his head were twitching. Wanting to keep him calm, she commented on his Minnesota Vikings football jersey, then began to talk about football with him. Carpenter began to yell out loud, "It's all about the Vikings." Carpenter then left her register and walked over to the magazine rack area of the store, still talking very loudly. After a few moments, he began to sing at an extremely loud volume. Ms. Lavin described the singing as so loud that it just sounded like yelling. The store manager approached Carpenter at which time he looked up and yelled loudly, "I'm outta here. It's time to leave," and walked out of the store. The manager called John Simpson between 10:30 a.m. and 11:00 a.m., and described Carpenter's irrational behavior and stated that he was causing some of the customers to become afraid and run out of the business.

Based on the description of the man, Mr. Simpson knew that this had to be Carpenter. Mr. Simpson began repeatedly calling Carpenter's cell phone in an attempt to make sense of the situation but did not receive a response. Some of the other employees from AAA Propane also tried to call him without success. Mr. Simpson actually got in his car and drove around the Oxnard area attempting to locate him. Mr. Simpson, in his last voice mail message to Carpenter, told him that he was going to give him until 12:00 p.m. to get in touch and let him know where the truck was, or he was going to contact the police. Mr. Simpson and his brother Hulon both assumed that Carpenter had resumed using drugs. Being extremely concerned about the safety of the public given the nature of the phone calls that he had received, Mr. Simpson also called 911 and related his concerns. He stressed to the dispatcher that he was very concerned about the safety of the public at large and asked that they have officers look for Carpenter and the truck.

The Pursuit By Oxnard Police Department

At approximately 12:27 p.m., on December 23, 2009, Oxnard Police Department dispatch received information regarding an impaired driver in a white propane truck and identifying the driver as Silas Carpenter. Dispatch broadcast the information via Mobile Data Terminal (MDC) to all on-duty police units in the city. The message stated Carpenter was driving a white AAA Propane truck and that he was possibly under the influence.

The MDC is used to receive calls for service from the police dispatch center as well as send messages between patrol units in the form of text messages. An MDC "all users" text message is distributed to all patrol units that are currently logged into CAD (computer aided dispatch system). Each patrol unit has the capability of sending and receiving individual messages as well

as all user text messages. In most patrol units, the MDC is mounted against the dash board with the screen visible to the driver and passenger.

Officer Larry Robertson knew Silas Carpenter from prior contacts spanning the last 20 years while working patrol. He had several encounters with him in which Carpenter had been unstable and violent. At approximately 12:55 p.m., Officer Robertson pulled into the parking lot of Vons located at Wooley Road and Victoria Avenue. He could hear a vehicle or a large truck that appeared to be revving its engine and honking its horn. Behind Officer Robertson was a FedEx truck and behind that, Officer Robertson saw the truck with individual propane tanks on it, with AAA on the doors and noted a black male driver. He felt that this was possibly Silas Carpenter. This was the vehicle revving its engine and honking.

Officer Robertson pulled through the parking lot trying to distance himself from the propane truck and parked in the northeast corner and continued to watch it. At first, Carpenter was stuck behind the FedEx truck on the northwest side of Vons. He then went around the truck and continued through the parking lot. Carpenter then came straight at Officer Robertson who thought that Carpenter might hit his patrol vehicle.

Carpenter stopped next to Officer Robertson, waived out his window which was down, and in a very animated manner, yelled at Officer Robertson that he was okay, stating, "Officer Officer, I'm okay, I'm fine, I'm fine." Officer Robertson recognized Silas Carpenter and called him by name saying, "Silas, stop, just stop your truck and get out, I need to talk to you." Carpenter

continued to state that he was okay and then started driving away. Officer Robertson attempted to contact radio to advise that he had the vehicle but was initially interrupted by other units.

Officer Robertson followed Carpenter in two circles through the parking lot and was then able to get through to radio and advise that he had located the truck. Carpenter then exited the Vons parking lot onto Victoria Avenue, proceeded southbound on Victoria Avenue in the number two lane, then accelerated and ran the red light at Leeward and Victoria Avenue.

Officer Robertson broadcast this, stating Carpenter was fleeing, initiated his red lights and siren, and went in pursuit. Carpenter immediately ran another red light at Ketch Avenue and Victoria. At this point, feeling it was too dangerous because of the propane on the truck, Officer Robertson discontinued the pursuit, shutting down his lights and siren. He was joined by Officer Steve Ramirez and they both drove the speed limit and continued to watch Carpenter from a safe distance.

Carpenter turned westbound on Channel Islands Boulevard and went over the Peninsula Bridge. He continued northbound on Harbor Boulevard from Channel Islands Boulevard approximately a mile ahead of the two patrol units, continually running red lights. Officer Robertson continued to advise radio of the circumstances of Carpenter's driving, that they were no longer pursuing him, and their distance behind him.

Carpenter turned eastbound on Wooley Road from Harbor Boulevard where Officer Robertson lost sight of him. Officers Robertson and Ramirez combed the residential areas around Victoria

and Wooley searching for him at which time Oxnard Police Department Commander Tom Chronister issued an order to re-initiate the pursuit based on Carpenter's erratic and dangerous driving and the presence of the propane canisters. Sergeant Miranda broadcast this order via radio.

Meanwhile, the following drivers were stopped at a red light at the intersection of northbound Victoria at Wooley Road: Kyle Sparrow in the number one lane, Gary Eaves in the number two lane, Terry Fitch behind Gary Eaves in the number two lane, and Yasmin Guzman in the number three lane. Carpenter approached the intersection from southbound Victoria in the number four lane then veered between lanes three and four, sideswiping Terry Fitch and Yasmin Guzman's cars simultaneously. He then crashed into Gary Eaves' car in the number two lane, pushing him forward into the intersection. He then plowed into the right side of Kyle Sparrow's car as he proceeded to the left (westbound) on Wooley Road.

Witness Matt Linn, who was in the number four lane behind the cars that were struck, estimated Carpenter's speed as he hit the first two cars at approximately 20 to 25 miles per hour. The witnesses involved in the crash who watched Carpenter accelerate away from the scene estimated his speed as he turned onto Wooley Road at between 25 and 40 miles an hour.

Officer Ramirez spotted Carpenter's now-damaged truck immediately after the collisions at the intersection of Victoria Avenue and Wooley Road. Officer Ramirez, who had been traveling eastbound on Wooley, immediately made a U-turn and initiated his overhead lights and siren in compliance with the radio transmission from Sergeant Miranda to re-initiate the pursuit of Carpenter.

Officer Robertson heard the broadcast of the collision, re-initiated his overhead lights and siren, and proceeded after Carpenter. He was now behind Officer Steve Ramirez and Officer Chris Jimenez. Officer Jimenez was calling the pursuit. They followed Carpenter westbound on Wooley Road from Victoria, northbound on Harbor Boulevard, then eastbound on Fifth Street back toward Victoria Avenue.

Officer Ernie Orozco was working in full uniform on a department-issued motorcycle. He monitored the calls of the collision at Wooley Road and Victoria Avenue and the subsequent pursuit and responded to the area to assist. As he approached the intersection of Fifth Street and Victoria Avenue, he monitored the pursuit as Carpenter traveled northbound on Harbor Boulevard from Wooley Road. As he was westbound on Fifth Street, the pursuit was now headed eastbound on Fifth Street. He saw Carpenter's propane tanker truck coming with several police units behind it, with their overhead lights and sirens on.

Officer Orozco made a U-turn in the roadway, initiated his own lights and siren, and proceeded to the intersection of Fifth Street and Victoria Avenue. His intention was to block traffic in order to leave a clear path for the suspect vehicle and the officers in pursuit so that they could travel through the heavily traveled intersection without danger of another collision.

Officer Orozco arrived at the intersection of Fifth Street and Victoria Avenue with lights and siren activated and stopped all traffic. He then positioned his motorcycle in front of the number one lane of northbound Victoria Avenue, almost parallel to the south curb line of Fifth Street. He got off his motorcycle and signaled to all motorists in the intersection to hold their positions. As

he stepped toward the center of the intersection, he saw the suspect vehicle entering the intersection at about 35 to 40 miles an hour.

Carpenter then veered the truck directly toward Officer Orozco. Officer Orozco believed that Carpenter was intentionally trying to run him over and ran in a southwest direction in order to avoid being struck. Once Carpenter's truck passed, it continued in a southeast direction toward Officer Orozco's motorcycle, but prior to reaching it, veered back in an easterly direction, possibly to avoid striking the southeast curb of the intersection according to Officer Orozco.

The truck continued eastbound on Fifth Street from Victoria Avenue towards Ventura Road. As he approached Ventura Road, Carpenter turned left (northbound) into the parking lot area of the state parole office which is located on Fifth Street just west of Ventura Road, and continued around and through the parking lot north and eastbound into the McDonald's parking lot. (See the overhead photograph of the parking lot below.) By this time, multiple Oxnard Police units were descending upon the area from different directions.

Events in the McDonald's Parking Lot

The northwest corner of Fifth Street and Ventura Road houses multiple businesses in addition to the Oxnard Parole Office. These include McDonald's, some smaller restaurants and businesses, and a Walgreens pharmacy. The complex is bordered to the north by a six-foot chain link fence which separates it from the Oxnard Airport. The complex is separated from a storage facility on the west side by a six-foot high block wall. The northeastern-most building in the complex is McDonald's, which is located at 401 South Ventura Road. The building itself is surrounded by asphalt parking areas on all sides. The building is oriented in an east-west direction with

entrances on the north and south sides. There is an eating area/patio on the east side. The drive-through wraps around the building from the northwest, along the south side and exits to the east.

After turning left into the south parking lot entrance near the parole office, Carpenter proceeded northbound until he reached the northernmost entrance to the McDonald's lot. He made a righthand turn into the lot at a high rate of speed, estimated by various persons between 25 to 30 miles per hour. There were dozens of people present inside the McDonald's, inside and outside of cars in the parking lot itself, as well as in the drive-through line. Carpenter drove eastbound through the parking lot along the northern fence line that borders the airport. A line of pursuing police vehicles entered the parking lot behind Carpenter with their rotating overhead lights on and sirens flashing.

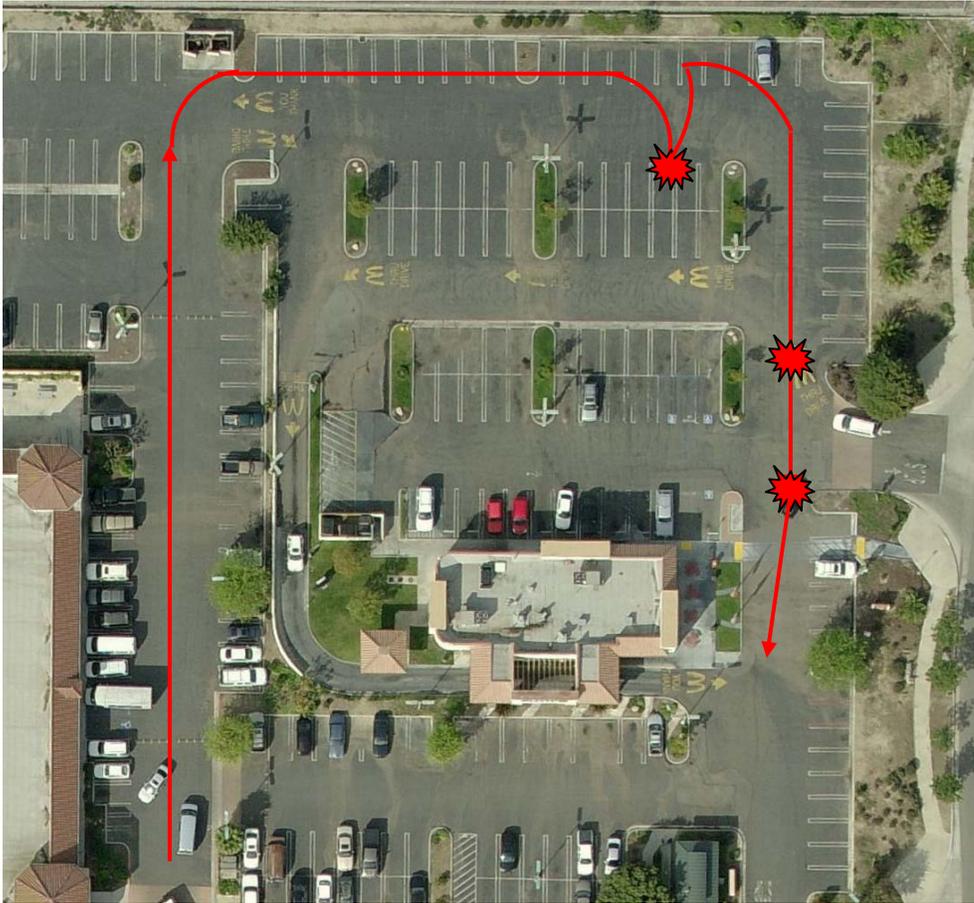
Joseph LaFreniere had parked his blue, 2008, GMC Sierra pickup in a parking space facing southbound in the northern row of parking spaces. He was talking to his friend Joanne Pasmant, who was standing outside the truck on the driver's side running board. Joanne's daughter, Jordan, was in Joanne's car which was parked adjacent to LaFreniere's truck. LaFreniere saw Carpenter's truck traveling at a high rate of speed as it entered the McDonald's parking lot and then almost immediately struck the rear of his vehicle. Just prior to the impact, LaFreniere told Joanne to "hold on" because he thought the propane truck was going to hit them.

Striking LaFreniere's truck caused major front-end damage to the propane truck, which began billowing white smoke. Several officers jumped out of their cars, ready to make a high-risk stop on the now stopped truck. They were next to and in front of their cars, with pistols drawn, giving

verbal commands to Carpenter. After the impact, the propane truck remained stationary for several seconds, but then Carpenter put the truck in gear and began to back up, revving the truck's engine. Again the police ordered him to stop. LaFreniere heard the officers yelling at Carpenter, "[telling] him to stop about 100 times." Carpenter then put the truck in drive, drove eastbound, then made a righthand turn (southbound). By that time, several other police units, including a Special Enforcement Unit (SEU) vehicle, were parked at various locations in the McDonald's lot, to the east and north of the restaurant. (See photograph below.)

Once Carpenter turned southbound in the parking lot at the eastern edge, he accelerated and headed directly at several officers and their vehicles positioned in the area. Civilian witnesses, as well as the officers, opined that Carpenter tried to run the police over and that he was trying to get away.

Several officers began shooting at the propane truck once it accelerated towards them and continued shooting until the propane truck had struck several police cars and had come to a stop. Six officers in total fired at Carpenter and the propane truck. All six officers who fired shots at the truck, including those who fired the fatal shots, gave voluntary statements after the incident.



Aerial photo of McDonald's parking lot and the course of Carpenter's vehicle

WITNESS STATEMENTS

Summary of Statements of Civilian Witnesses

Over 25 civilians who were in and around the McDonald's parking lot were interviewed as a result of this incident. None of them offered information that was in conflict with the detailed statements of the shooting and non-shooting officers involved. For that reason, and also for the sake of brevity, their individual accounts will not be detailed.

Nearly every one of the civilian witnesses heard the pursuit officers' sirens and some of them, depending on where they were, saw the flashing lights from the officers' vehicles. They all recognized the vehicles and the uniforms of the officers and immediately identified them as law enforcement.

They uniformly described Silas Carpenter's driving as dangerous and out of control. Many of them felt extremely fearful that someone was going to be hurt or killed by the truck. The civilian witnesses variously described the speed of the truck as between 25 and 50 miles an hour when it entered and then proceeded through the parking lot. The majority of them, depending on where they were, heard the officers yelling at Carpenter to stop his vehicle, as described by Joseph LaFreniere above.

Several of the civilians who were in positions to witness significant portions of the events in the McDonald's parking lot were asked their opinions about whether they thought the police had reacted appropriately when they shot Carpenter. With the exception of one person, who indicated she thought the police did not give the driver adequate opportunity to stop, all of them agreed that the officers had done everything possible to control the situation and seemingly had no other choice than to use deadly force to stop the driver. They all perceived that allowing Carpenter to proceed further would likely have led to injury or death to one or more innocent bystanders.

Statement of Officer Ramiro Holguin

At about 1:00 p.m., Officer Holguin was in the briefing room beginning evening shift. Commander Chronister requested officers to assist units in an ongoing vehicle pursuit. Once in

his marked patrol car, he heard that the pursuit was eastbound on Fifth Street from Harbor Boulevard. He drove westbound on Second Street to Ventura Road, then southbound on Ventura Road toward Fifth Street as the pursuit was eastbound on Fifth Street passing Victoria Avenue. He pulled to the side of the road with the intention of blocking traffic at Fifth Street should the pursuit continue eastbound. He then heard the pursued vehicle make a lefthand turn into the parking lot of the parole office.

Officer Holguin then made a righthand turn into the parking lot, stopping at the front door of Walgreens. He saw the suspect vehicle, a large, white, flatbed truck with multiple propane tanks loaded on the back of the truck. The truck drove eastbound, north of the parole office and made a lefthand turn along the front of the strip mall behind McDonald's. Officer Holguin paralleled him by driving northbound along the front of Walgreens and past McDonald's. At the north end of the parking lot, the truck made a right hand turn into the McDonald's parking lot and drove eastbound through the north end of the parking lot along the fence line that separates the parking lot from the airport. Officer Holguin stopped and angled his vehicle along the north side of the northernmost exit, adjacent to the curb/island in an attempt to block off the truck's exit from the parking lot.

Officer Holguin got out of his car and saw the truck drive eastbound before making an abrupt righthand turn into the rear-end of an occupied pickup truck. He saw LaFreniere jerk as the pickup was shoved forward. He saw Pasmant jump from the driver's side running board of the pickup truck and crouch down along the driver's side of her car, which was next to the pickup. Officer Holguin ran toward the vehicles, yelling at Pasmant to get her away from the pickup.

She was still covering herself down along the driver's side of her vehicle. Just as he was about to reach her, she got into her vehicle and he came up along side. He saw her sitting in the driver's seat with her 13-year-old daughter who was in the front passenger's seat. They were holding onto each other and ducking down.

Officer Holguin drew his department-issued handgun and pointed it at Carpenter who looked right at Officer Holguin. With Officer Holguin pointing his handgun directly at him, Carpenter reversed the vehicle, and began to back away. At the same time, Officer Holguin saw Senior Officer Steve Ramirez, who had been involved in the vehicle pursuit, running eastbound along the fence line with his weapon drawn trying to get an angle on Carpenter. Carpenter stopped, made a half turn to the left, and accelerated forward eastbound along the fence line of the parking lot toward Ventura Road then turned southbound paralleling Ventura Road.

Carpenter drove the propane truck past a brown van, occupied by a female, which was stopped in the traffic lane facing southbound. Officer Holguin saw that Carpenter's probable path would lead the propane truck straight into his patrol car. By this time, Officer Holguin noted several other patrol cars were now stopped next to and behind his car. He saw several other officers were out of their patrol cars ducking behind the marked black and white patrol cars and they had their handguns pointing northbound. Carpenter slowed down slightly and then stepped on the gas and accelerated forward, straight at Officer Holguin's car.

Just as the propane truck was about to collide with the front end of Officer Holguin's vehicle, he heard the first shots being fired. The shots continued as Carpenter collided with the front of his

patrol car, pushed it aside and then crashed into another patrol car. He saw several officers moving to the sides to get out of the path of the truck. The truck continued through the two parked patrol cars and then slowed and came to rest in front of McDonald's.

Statement of Officer William Swisher

Officer William Swisher began his shift on December 23, 2009, at 6:00 a.m. He was working as a one-man unit and his shift normally ended at 6:30 p.m. At approximately 1:00 p.m., he noted the MDC message sent out by dispatch notifying the officers to be on the lookout for a propane truck driving erratically. The message also stated that the driver was possibly Silas Carpenter and that he was possibly under the influence.

Officer Swisher has had numerous contacts with Silas Carpenter in the past and believed he would resist arrest. He sent out an MDC message advising the responding officers to use extreme caution when contacting Carpenter. Officer Swisher said he had a bad feeling and believed there was going to be an event with Carpenter because it was Carpenter's "modus operandi." Officer Swisher knew that when Carpenter "popped up on the grid, something bad happened." He thought to himself, "Where are we going to deal with Silas today? What's it going to be this time? Is it going to be a barricade? Is he going to cut someone's throat again?" Swisher immediately became very concerned.

Officer Swisher's first contact with Silas Carpenter was years ago when Swisher was in field training. He said Carpenter threw someone off a balcony, resulting in the police fighting with and arresting Carpenter. Swisher said he had arrested Carpenter numerous times over the ensuing

years, mostly for violating Health and Safety Code section 11550, under the influence of a controlled substance.

Officer Swisher related an incident many years back when Carpenter had obtained a job driving a beer truck. He ran into Carpenter in the downtown area of Oxnard after that, and Carpenter told him that he was doing great because he had a job and had cleaned up. Officer Swisher said this was out of character for Carpenter. Swisher said Carpenter was still wearing “Vikings” attire and singing “Purple Rain,” but was not under the influence. About a month later, Officer Swisher remembered that Carpenter stole the beer truck he was driving and was subsequently arrested. He saw Carpenter months after he got out of jail and asked him what happened, to which Carpenter replied he was tired of working and figured he would steal the truck, go back to jail and live on unemployment.

Officer Swisher’s most recent contact with Carpenter prior to this one occurred approximately four years ago when Carpenter stabbed a taxicab driver and barricaded himself at his parents’ house. Swisher remembered Carpenter was asking for Officer Wendy Gietzen, Officer Swisher’s partner at that time, and she was able to convince him to surrender.

On this day, Officer Swisher said he was handling a front desk call in the station when he heard Officer Larry Robertson radio he had located the propane truck. He immediately became concerned for Officer Robertson’s safety because Robertson was by himself. Officer Swisher immediately left the station and followed the pursuit.

Trying to catch up to the pursuit, Officer Swisher went through the intersection at Wooley Road and Victoria Avenue where he heard on the radio that Carpenter had a traffic collision. The pursuit was briefly terminated but then reinitiated once Carpenter was eastbound on Fifth Street.

Officer Swisher drove towards Harbor Boulevard attempting to catch up. He was still behind the pursuit when he heard over the radio that Carpenter had tried to hit motor Officer Orozco, who was blocking traffic at the intersection of Fifth Street and Victoria. Officer Swisher went “code 3” (overhead lights and sirens) at that time to catch up and join the pursuit. He first saw the propane truck as he approached the pursuit traveling eastbound on Fifth Street, past Patterson Road.

Officer Swisher went through the intersection at Fifth and Victoria, noting that Officer Orozco was alright. He said he observed the propane truck turn left from Fifth Street into the driveway near the parole office. He immediately thought Carpenter was going to hit or kill someone because it was a busy location. He started to turn into the parking lot behind the pursuit, but then decided to travel eastbound in the westbound lanes of Fifth Street, with overhead lights and siren on, in an attempt to intercept the pursuit on the other side (Ventura Road). Officer Swisher made a left on Ventura Road and another left into the driveway east of the McDonald’s restaurant.

Officer Swisher saw the propane truck eastbound on the north side of the parking lot. He parked his police unit facing northbound at an angle in the driving aisle, east of McDonald’s, blocking the exit. He got out of the car in case Carpenter tried to hit it. As he got out, he saw the propane truck accelerating eastbound, and he could hear the truck’s engine rev and watched as it turned

sharply and crashed into LaFreniere's pickup truck. Officer Swisher saw LaFreniere in the driver's seat and Pasmant on the side of the pickup. He thought that Carpenter had tried to kill them.

Officer Swisher drew his Beretta 9mm handgun and began running in a northwest direction towards the propane truck. His intention was to assist with an arrest of the driver. Swisher observed an unidentified officer running to his left in the same direction. As he ran, he noticed other officers on both sides of the propane truck and began yelling, "Crossfire, crossfire!" When LaFreniere tried to move his truck away, the propane truck suddenly backed up. Officer Swisher said he wanted to shoot Carpenter at that time, but did not shoot because there were officers in the crossfire zone.

After the propane truck backed up, it accelerated eastbound in the parking lot. Officer Swisher thought Carpenter was headed towards him, so he turned and ran back towards his police unit to avoid being struck. As he was running, he noticed that SEU officers had pulled into the driveway and blocked the driveway in a north and south direction. Swisher saw another police unit blocking a portion of the driveway leading in from Ventura Road. He ran out of the path of the truck as it accelerated behind him but immediately noticed that as the SEU officers got out of their police unit, the propane truck was coming southbound, straight towards them. Officer Swisher believed Carpenter was going to hit them.

The propane truck drove past an occupied brown minivan, nearly striking it. Officer Swisher had run to the middle of the traffic lane between the designated parking rows just north of

McDonald's. He still had his gun out, so he stopped and began firing (eastbound) at the propane truck as it went by him (southbound) after it passed the brown minivan. He fired three to four rounds through the passenger window, which broke.

As the propane truck passed him, Officer Swisher saw the propane tanks in his field of vision and stopped shooting because he was afraid the tanks would explode. He ran southbound in the direction the propane truck was traveling, toward the sidewalk in front of McDonald's. As he ran onto the sidewalk, he heard shots fired from the south in a northerly direction.

He saw the propane truck accelerate towards the SEU officers' vehicle, which was stopped in the north/south aisle, directly to the east of McDonald's. He saw the propane truck crash into the police car. He saw one of the SEU officers "flying" as if he had been hit. Officer Swisher observed at least three SEU officers running from the south to the grassy area in front of McDonald's.

The SEU Officers then fired a volley of shots at Carpenter as the propane truck continued to move forward. He could hear the engine revving, even though the propane truck was damaged extensively. He believed the propane truck was backing up in order to exit through the driveway entrance. It then traveled forward and stopped.

Officer Swisher believes he was the first officer to fire his weapon. He shot at Carpenter based on everything he knew about Carpenter's past and what he had just done. Officer Swisher knew Carpenter to be extremely volatile and that he had possible mental issues. He believed Carpenter

intentionally tried to run over Officer Orozco, that he intentionally drove into the pickup truck in the McDonald's parking lot, and intentionally tried to run over and kill the SEU officers that were blocking his path. He believed Carpenter was going to drive the propane truck either into the McDonald's restaurant or at the SEU officers and kill someone. Swisher believed that Carpenter's plan was to go out "in a blaze of glory."

Statement of Officer Terry Dobrosky

Officer Dobrosky was in briefing at the beginning of evening shift, with his partner Officer Juanita Suarez, when Commander Chronister advised them about an out-of-control truck loaded with propane tanks. Commander Chronister needed two units to go in service immediately, so Officer Dobrosky volunteered. He did not know who the driver of the truck was during the incident.

Running out of the station, Officer Dobrosky turned on his radio and heard that the pursuit was westbound on Wooley Road. Officer Suarez drove out on Second Street to Ventura Road. When they arrived at Ventura Road, the pursuit was near Harbor Boulevard, so they continued westbound on Teal Club Road past Ventura Road. The pursuit was eastbound on Fifth Street towards Victoria Avenue, so Officer Suarez stopped their car at Teal Club Road and Victoria Avenue in case the suspect turned northbound on Victoria. He saw the pursuit as it continued eastbound on Fifth Street.

Officer Dobrosky described at least two police units driving with lights and sirens behind a large truck carrying numerous propane tanks traveling at approximately 50 to 60 mph towards the

intersection. Dobrosky heard over the radio that a motorcycle officer was in the intersection attempting to stop traffic. Officer Dobrosky lost sight of the propane truck as it approached the intersection, but noted that it did not appear to be slowing down.

He then heard that the driver of the propane truck tried to hit the motor officer. To him, it sounded as if it was “an assault with a deadly weapon.” As the propane truck continued eastbound through the intersection, Officer Suarez turned the vehicle around and they drove eastbound on Teal Club Road towards Ventura Road, paralleling the pursuit with the intent to get ahead and stop traffic since the driver appeared out of control. Officer Dobrosky believed the driver of the propane truck was going to hurt or kill someone.

When they arrived at the intersection of Ventura Road and Teal Club Road, they stopped in case the propane truck was going to turn northbound onto Ventura Road. He heard that the propane truck was turning northbound onto Ventura Road, but he could not see it. He then heard that the propane truck turned left into the parking lot of the parole office.

He and Officer Suarez proceeded south on Ventura Road while via the radio he heard that the truck was traveling behind the parole office. They pulled into the McDonald’s parking lot and stopped in the northernmost driveway off Ventura Road. Dobrosky said they still could not see the propane truck, but they heard that it was heading towards McDonald’s. He then saw the propane truck traveling northbound in front of the strip mall behind (west of) McDonald’s and watched it turn right and enter the McDonald’s parking lot. He and Officer Suarez got out of their car to take cover.

As the truck came into the north side of the parking lot, Officer Dobrosky heard the truck's engine revving. He had a clear view of the north side of the parking lot and saw that it had a clear path to continue eastbound. Abruptly, it turned left, accelerated and collided "hard" into LaFreniere's gray pickup truck. He saw LaFreniere "fly forward" and thought the propane truck driver intended to kill the pickup truck driver. He drew his department-issued Beretta 9mm handgun and ran northwest towards the propane truck. His intent was to shoot the driver, but he was unable to shoot because officers from the pursuit were behind the propane truck in the crossfire zone.

The propane truck briefly stopped after colliding with the pickup truck, and Officer Dobrosky thought the pursuit was over. He then heard tires squealing and thought the propane truck was pushing the pickup truck forward. As he began running north towards the rear of the propane truck, it backed up, then came eastbound towards him.

Officer Dobrosky turned around and ran south then west to get cover behind a parked car as the propane truck accelerated. He saw an unknown officer on the northeast side of the parking lot and thought the propane truck was aiming to hit that officer. Officer Dobrosky still had his gun out, but did not fire for fear of hitting that officer with crossfire. As he was running, he crossed behind Officer Suarez and grabbed her belt to pull her with him towards cover. Once the propane truck passed their location, he lost sight of Officer Suarez. The propane truck turned southbound at the east end of the parking lot.

He then looked to the south end of the parking lot and saw several police units and officers east of McDonald's. The propane truck was speeding up directly towards the officers and he could hear the engine accelerating. He believed the driver of the propane truck was intent on killing the officers in his path. He watched as the officers attempted to scramble out of the way, but did not think they were going to make it. He heard possibly two shots fired from unknown locations. Officer Dobrosky then lined up the sights on his gun as the propane truck passed him, and he fired one round towards the passenger side of the propane truck at an angle, as the truck was southeast of his location. He did not fire a second round because he was afraid he was going to hit one of the officers south of his location or one of the many civilians running in the area. He was also afraid of what his bullet would do if it struck the propane tanks on the truck.

Officer Dobrosky saw the propane truck smash into a police unit, which then appeared to strike an officer, causing the officer to fall to the ground. As he ran southbound on the east side of the restaurant, he heard at least five shots from multiple guns in rapid succession being fired from an unknown direction. He saw Officers Marquez and Gormley in the immediate area of the collision.

After the volley of shots, Officer Dobrosky stopped perpendicular to the propane truck, directly east of McDonald's. He noticed at this time that other officers, including Detective Edward Baldwin, were also in the area between the passenger side of the propane truck and in front of McDonald's. At the time he fired his gun, based on what he had observed, Officer Dobrosky believed that the officers in the truck's path were going to be killed.

Statement of Detective Edward Baldwin

On December 23, 2009, Detective Baldwin was assigned as an investigator with the Violent Crimes Task Force. His shift began at 7:30 a.m. Around 1:00 p.m., he was at the Oxnard Police Department, booking evidence. A fellow officer informed him that a pursuit was in progress. Detective Baldwin got into his police vehicle and heard Officer Larry Robertson radio that he was in the area of Wooley Road looking for a truck of some type. He soon heard that the truck was located, and officers became involved in a pursuit. The radio traffic identified the pursued truck as a propane truck and he remembered hearing that the pursued truck had caused traffic collisions and the suspect had possibly lost control of the vehicle at some point.

He was in the area of Fifth Street and Victoria Avenue at the time the pursuit passed him. When he saw the truck and noted the numerous gas cylinders mounted on the rear of the truck, he became alarmed. When he first heard the broadcast regarding the propane tank, he had pictured in his mind that this vehicle was one with just a single large tank in the rear, and not numerous gas cylinders as this truck had. Detective Baldwin estimated the truck's speed at 50 to 60 miles per hour, which he described as a "good pace for a large size truck."

Just after seeing the truck for the first time, he also heard the broadcast about the truck attempting to strike Motor Officer Orozco in the intersection of Victoria and Fifth Street. Based on that, Detective Baldwin then began to follow the pursuit from a distance. He wanted to be in the area where the pursuit terminated in the event the driver fled on foot. He thought he could then be available to help in establishing a perimeter. Detective Baldwin followed the pursuit as the truck continued eastbound on Fifth Street, toward Patterson Road. At one point, he briefly

pulled his vehicle over to allow other police units to pass him. He noted one of the units was a “slick top” (no overhead light bar) manned by three officers, and he surmised they were SEU officers.

When he was just east of Patterson, Detective Baldwin heard an officer broadcast that the propane truck had pulled into the parking lot of the parole office. At this point, he began to think that there was going to be a significant problem. He was aware that this was a busy parking lot and that it was lunch time. In his mind, this truck was a “giant bomb.”

He drove to the area and entered into the parking lot through the western driveway apron/entrance onto the complex off of Fifth Street and ended up driving in front of the strip mall located just west of McDonald’s. He continued into the parking lot of McDonald’s and parked in a stall with his vehicle facing in a northsouth direction. There were numerous civilians in the area, and McDonald’s was very crowded.

From his car, he could see the truck and numerous police vehicles. He thought that the pursuit had terminated and a high-risk stop was underway because the truck was stopped and officers were yelling at the driver. He could not make out what was being said but could hear the truck’s engine revving loudly. He noticed a large amount of white smoke coming from the truck and then realized that the propane truck was actually pushing another vehicle that was parked in the lot.

Then the truck backed up and began to accelerate forward at a high rate of speed, eastbound through the parking lot. Detective Baldwin got out of his car and ran in a southeast direction toward the east side of McDonald's. He saw the SEU vehicle stopped east of the restaurant with several officers standing around it. The propane truck was now driving southbound, directly at the police car and these officers.

Detective Baldwin said that he was running at the truck and ended up directly parallel to the truck's cab as it passed in front of him. He drew his Sig Sauer Model 220 .45 handgun and fired one round in an eastbound direction at the truck's cab. He stopped shooting because he no longer had a clear shot at the truck and he was concerned about another officer possibly being positioned between him and the propane truck. The propane truck continued southbound and smashed into a police unit. When the collision occurred, Detective Baldwin thought that officer Rocky Marquez was on the driver's side of the police car, but he did not know where the others were.

He heard multiple gunshots being fired east-southeast of his position. He thought "it seemed like a lot, more than four or five." He described the shots being fired in rapid succession. He kept running to where these officers were located as the shots were still being fired. He stopped right next to Officer Rocky Marquez on the raised grass area on the east side of McDonald's. The shooting stopped just before he stopped running and he saw the driver of the truck go "stiff." He then saw the driver slump over. Officer Marquez and another officer cleared the truck.

When asked what was going through his mind at the time he fired, Detective Baldwin replied, “They were gonna get killed,” referring to the officers near the SEU vehicle on the east side of the restaurant.

Statement of Officer Michael Johnson

Officer Michael Johnson was assigned to the Special Enforcement Unit (SEU) (SWAT). He was working a gang assignment on this day and was driving a marked “slick-top” patrol car (four-door Ford Crown Victoria). It has a forward facing red light mounted against the windshield above the rear view mirror; it has the word “police” painted in white against a horizontal black stripe on both the front passenger and driver side doors. His uniform was all black, with a metal oval-shaped badge over his left shirt pocket, a metal rectangular name plate, and SWAT pin over his right shirt pocket. His uniform had patches on the right and left shoulder that were blue, yellow, and orange with the words “City of Oxnard Police Department” on them. With Officer Johnson was Officer Rocky Marquez in the right front seat and Officer Kevin Gormley in the right rear seat.

Officer Johnson heard on his police radio that Officer Larry Robertson was pursuing a propane truck. During the pursuit, he noticed that a text message from Officer William Swisher was sent over the MDC indicating that the driver, identified as Silas Carpenter, was possibly under the influence and that Carpenter had a prior history of fighting with officers.

Officer Johnson was southbound on C Street between Fifth Street and Wooley Road when he heard via radio that Officer Robertson canceled the pursuit because of the reckless manner

Carpenter was driving and the size of the truck. Officer Johnson was eastbound on Wooley Road when Officer John Wilkie contacted Officer Marquez on his Nextel and told Officer Marquez to respond to the area of the pursuit. Officer Johnson made a U-turn at the Five Points intersection and proceeded westbound on Wooley Road. Officer Johnson believed at that time the pursuit was headed eastbound on Fifth Street from either Victoria Avenue or Harbor Boulevard.

Officer Johnson then heard on the radio that Motor Officer Ernie Orozco, while directing traffic, was nearly struck by the propane truck near the intersection of Victoria Avenue and Fifth Street. He commented to Officers Marquez and Gormley that, “the want just got upgraded to an assault on a peace officer.” He began thinking “that this guy wanted to kill somebody.” He believed that Carpenter’s attempt to strike Officer Orozco was clearly intentional “because it’s a big intersection, you have plenty of room to drive by.” Due to the severity of the situation, he accelerated to catch up to the pursuit, which he felt would probably not be terminated again.

Officer Johnson was northbound on Patterson Road toward Fifth Street when he saw marked Oxnard patrol cars pursuing the propane truck. The propane truck was much bigger than he envisioned. He had pictured it as a pickup or somewhat smaller truck. He activated his emergency lights to avoid being struck by oncoming traffic, then turned off his emergency lights and trailed the pursuit eastbound. He saw the propane truck turn north into the parking lot at the northwest corner of Fifth Street and Ventura Road.

The pursuing police cars followed the propane truck into the lot, northbound on the west side behind the McDonald's restaurant. He instead entered at the next driveway, south of the gas station and turned east upon entering the lot. He saw numerous pedestrians in the parking lot and vehicle traffic near the 7-11 gas station located on the southeast corner of the parking lot as he drove eastbound on the south side of the parking lot. He then turned north and continued along the east side of the parking lot stopping, at the northeast corner of the McDonald's restaurant. He had to go slow to avoid hitting civilians as he drove through the parking lot.

He stopped when he saw that the propane truck was stopped, facing southeast, midway along the northern-most row of parking spaces. Several police cars were behind it, and he thought the truck was disabled. He and Officers Marquez and Gormley got out of their police car, believing they were transitioning to a high-risk stop. They were about to run towards the rear of the propane truck where the other police cars were staged. Officer Johnson was several feet in front of his patrol car northeast of the McDonald's when he realized that the propane truck was not disabled. It started slowly moving forward, then accelerated eastbound along the north side of the parking lot before turning right, headed southbound. The engine was "revving up" and it picked up speed as he saw uniformed officers on foot running out of its path. Then it came straight at him.

Officer Johnson could not give a determination of the truck's speed, but knew it was going too fast to turn left and exit the lot, saying, "He pointed that thing, pointed the truck right at us and accelerated as fast as the truck would go I'm sure." Officer Johnson backed up, thinking that the driver of the truck was going to run him over or kill him if he did not get out of the way. He related, "I was scared shitless I thought he was going to kill me." As he backed up, he saw

Officers Marquez and Gormley to his right in his peripheral vision and thought that they could also be run over by the propane truck.

Officer Johnson described the situation as if it was in slow motion and that his attention was focused on the truck. As it got closer, he felt he had tunnel vision. "I could see [the driver] inside of the cab clear as day." He described the suspect driver as a large black male with short hair. Officer Johnson did not remember making eye contact, but described that Carpenter "had a determined look on his face; that he was looking straight ahead; like he wanted to run over whatever was in front of him. That's what he looked like, he looked angry like he wanted to run me over."

Officer Johnson drew his department-issued Heckler & Koch .45 handgun as the truck was closing on him. He could not believe how fast it was coming. He believed that the driver of the truck was out of control. From a position southwest of the east driveway to Ventura Road, he fired one round in a northbound direction, striking the windshield of the propane truck. He "felt like [Carpenter] [did] not want to get away; he want[ed] to kill me, because if he didn't, he would have just turned and left the parking lot [via the driveway]."

After he fired, the truck was still coming. Officer Johnson concentrated on the front sight of his handgun and thought to himself, "He is way too close and he is going to hit [me]." He believes that he fired three to five additional rounds at that time, directly at the front of the propane truck, all in a northerly direction. He was surprised that the propane truck still did not stop, so he continued backing up in the planter along the driver side of his patrol unit. As he backed up, the

propane truck collided into the front-end his patrol car. “He hit our car, he just hit it full force; head on collision, pushed the car, the car moved.” Officer Johnson saw two officers running, trying to get out of the way as the propane truck smashed into the patrol car, pushing the car out of its path as the truck continued southbound.

Officer Johnson could not estimate how many pedestrians were in the parking lot behind them. He did not count them but said it still looked like a lot of people to him. His first thought was, “He’s going to run over all these people back here, kids, and innocent people just enjoying their day not realizing what’s going on. They were going to get run over by this guy and killed because the truck was big and this guy wasn’t going to stop.”

Officer Johnson found himself behind Officer Marquez as they backed up trying to get out of the truck’s path as it continued southbound approaching the front of McDonald’s. Officer Johnson said he and Officer Marquez then both fired one round almost simultaneously at the driver in an easterly direction through the passenger door of the truck as it passed. Once he and Marquez fired those last rounds, Carpenter’s body went rigid, then slumped over, and the truck slowly came to a stop.

Prior to moving towards the truck, both Johnson and Marquez did what is referred to as a “tactical reload” where they discarded their partially used magazine for a fully loaded one from their utility belt. As they approached from the passenger side, the truck was still in gear and running. Carpenter was slumped over toward the passenger side. Officer Marquez told the suspect driver, “If you can hear me, don’t do anything stupid, don’t move.” Officer Johnson

reached up and put the truck in park, turned off the engine and removed the key from the ignition, putting them on the dash. After the vehicle was secured, both he and Officer Marquez backed out of the cab.

Statement of Officer Rocky Marquez

SEU (SWAT) Officer Marquez was working a gang enforcement assignment with Officers Michael Johnson and Kevin Gormley. Officer Johnson was driving, Officer Marquez was in the right front passenger seat, and Officer Gormley was in the right rear passenger seat. The vehicle was a fully-marked, black-and-white “slick-top” police unit with no light bar on top. All three were wearing full police uniforms, black with “Oxnard Police Department” patches on each shoulder, and all had a badge with full gun belt and bdu-style pants and boots.

Officer Marquez explained they had just finished booking someone at the Oxnard Police Department jail, when he looked at the MDC and saw a notation about a subject driving a propane truck possibly under the influence of a controlled substance. They were southbound on C Street, headed toward Wooley Road when Officer Larry Robertson broadcast on the radio indicating he had located the propane truck. Officer Marquez listened as Officer Robertson tried to make a traffic stop on the truck, then initiated a pursuit. After a short period of time, Officer Robertson radioed that the truck was not stopping and was somewhere in the area of southbound Victoria Avenue and Channel Islands Boulevard. Officer Robertson indicated the vehicle was driving erratically, and because of the propane tanks on the back of it, he was ending the pursuit.

Officer Marquez believed that would be the end of the situation and the driver was going to get away. They were near the Five Points intersection when he recalled hearing radio traffic that officers were still following the propane truck but were not in pursuit, heard additional traffic regarding the subject driving erratically, then, shortly afterwards, heard the watch commander order the pursuit reinitiated.

Officer Marquez thought to himself that this was “bad news” because this was a loaded propane truck. Officer Marquez noted that a tank could fall out and explode or the truck itself could explode if it crashed. Officer Marquez believed it was a serious situation and was concerned that the situation could go bad fairly quickly, envisioning that the driver could barricade himself in the vehicle. He overheard radio traffic about spike strips being used. It was Officer Marquez’s belief that if it ended in a barricade situation, it would be a SWAT call-out.

As they continued westbound on Wooley in the area of H Street or Ventura Road, he heard that the pursuit was eastbound on Fifth Street and that Motor Officer Orozco was positioning himself to block traffic at Victoria Avenue for the pursuit. A short time later, he heard that the propane truck driver tried to hit Officer Orozco. Officers Johnson and Marquez conferred as they proceeded to the area of the pursuit and agreed the situation had been elevated to a “245 [assault] on a police officer.” He said it was a serious thing trying to kill a motor officer, and the erratic driving ultimately made the propane-carrying truck a “rolling bomb.”

Officer Marquez said that he was scared for the officers and anyone that might be in the area of this truck. By now, the truck was on Fifth Street passing Victoria and they were headed

northbound on Patterson, toward the pursuit. Officer Marquez recalled thinking to himself that they were going pretty fast and that maybe they should slow down in case the truck came southbound on Patterson as it would be headed straight for them.

He then saw the truck traveling eastbound on Fifth Street at a speed he estimated to be well over 50 miles per hour. He noted that the truck was much larger than he initially anticipated. As they began to follow the pursuit Officer Marquez believed they would assist wherever the pursuit ultimately terminated. That way, the patrol officers would have their expertise (SWAT training) to help with a high-risk stop or anything else that might develop.

He saw the propane truck turn into the parole office parking lot. Officer Marquez's group continued toward the intersection of Fifth Street and Ventura Road and came into the parking lot at the next entrance through the gas station. Officer Johnson drove through the gas station lot and through the east side of the Walgreens parking lot. He described the area of the parking lots for the gas station and Walgreens as being "packed with people." He estimated 10 to 20 people in the Walgreens parking lot and he recalled the drive-through of the McDonald's restaurant as full. He also noted a large concentration of people in the McDonald's lot, north of the building.

As they drove northbound, Officer Marquez saw another Oxnard police unit headed northbound in the same direction toward the northeast corner of the McDonald's parking lot. Officer Marquez saw the propane truck in the northern portion of the McDonald's parking lot, facing southeast. There was a vehicle in front of the propane truck that may have been struck. There was significant damage to the front end of the propane truck and he thought to himself that the

truck was disabled. Based on the condition of the truck, he believed it either came to a stop or was forced to stop as a result of some type of crash.

They parked facing northbound just south of the northeastern-most driveway to the McDonald's parking lot from Ventura Road. Officer Marquez saw a police car parked just slightly west of their car and additional police cars parked north of their unit, beyond the driveway. He saw police officers running toward the propane truck and believed that they were transitioning to an arrest team. All three officers got out of the car and began moving northbound through the parking lot toward the propane truck.

Officer Marquez did not have his gun drawn because he planned to run across the parking lot. He then saw the propane truck back up and begin accelerating forward, coming eastbound and then southbound through the parking lot. As this was occurring, Officer Marquez believed that he was somewhere near the midpoint of the driveway from Ventura Road as described above. He looked at the truck as it approached and saw a black male driver looking straight toward him and accelerating. The truck was making the turn to come southbound and was now coming directly toward him. He estimated it was initially going 20 to 25 miles per hour and increased in speed after the turn. He drew his department-issued .45 caliber Heckler & Koch pistol and began backing up, trying to create distance between himself and the oncoming propane truck. He was afraid that the truck was going to hit him and Officers Johnson and Gormley. He believed he would more than likely be dead if he was struck by the truck, noting, "I'm thinking if this guy hits me, that's it." Officer Marquez believed the truck driver was going to try to kill him or one of his partners or all of them.

He said that based on the truck's speed and lack of turning movement (toward the driveway), it was obvious that the truck was "barreling down straight for us." He said, "Frankly, I [was] scared" and thought the best thing to do was to stop the truck, and the only way he knew how to stop a "ten-ton truck" was to stop the driver. Officer Marquez believed he fired four or five shots in a north, north-west direction, directly at the truck's windshield. He estimated his distance from the truck as roughly 10 to 15 feet when he began to fire. He described it as "pretty close."

Officer Marquez stopped firing just as the truck was just about to hit their patrol car. As he was firing, he was continually backing up and estimated that he was even with the front passenger door of their patrol car when he stopped firing. With the realization that the truck was still not stopping and certain that he was going to get hit, both he and Officer Gormley turned and ran. He passed Officer Gormley and simultaneously heard the collision with the patrol car. As he looked back over his shoulder, the rear bumper of the patrol car struck Officer Gormley's right hip as the patrol car was struck and shoved backward by the propane truck.

Officer Marquez described the car's bumper pushing Officer Gormley in the direction he was already going (southbound). Officer Marquez said Officer Gormley was "higher than he should be in relation to me" and the shorter Gormley was "eye to eye" with him, leading Marquez to believe Officer Gormley was in the air. He described Officer Gormley leaning on the car, "almost riding it" as it pushed him along. This was occurring as the propane truck was "barreling through" their patrol car. He continued to run as Officer Gormley was "getting nailed by the car." He was just past the rear driver side of the patrol car when he lost sight of Officer

Gormley. At that moment he thought Gormley had been seriously hurt, if not killed, by being either pinned against, run over, or knocked out by the patrol car.

Officer Marquez was very scared. He was afraid that because the truck was still moving it was going to “plow through anyone else and any other officers that tried to get in his way as he had just plowed through our vehicle.” He explained that he was scared for the safety of officers that would have to try to stop the driver of this truck because the driver would try to kill them, just as he had tried to kill Officers Gormley, Johnson, and himself. Officer Marquez was also afraid for the lives of all the civilians in the area because they were only feet away from this propane truck. Officer Marquez was convinced the driver of this truck was going to kill someone and that he may have already killed Officer Gormley.

Now standing squarely in front of the McDonald’s, Officer Marquez spun around and aimed his handgun at the driver of the truck which was now headed south and slightly west toward the drive-through. Officer Marquez initially shot at the windshield of the truck. As the truck plowed forward, Officer Marquez’s view of the driver shifted and he could now see the driver through the passenger side window of the truck. Officer Marquez noted that he could see the driver’s face and he did not appear to have any emotion. It appeared to Officer Marquez that the truck was slowed down slightly by the impact with the patrol car but was still “moving at a pretty good speed.”

Officer Marquez believes he fired two shots through the front windshield of the truck and then an additional three shots through the passenger window and door of the truck. He believed that the

third shot he fired from the side view was the shot that impacted the driver's head. He noted that immediately after firing the third shot, he saw the impact on the side of the head and the driver "seized up" and got "really stiff and erect." The vehicle was still moving, and immediately after that, he heard a gunshot over his left shoulder. Officer Marquez did not know who it was initially, but he looked over his shoulder and saw that Officer Johnson was aiming his pistol at the driver of the truck. The truck then slowed and sounded as if it were grinding to a halt. Officer Marquez noted that the driver was now slumped over and his right arm dropped from an elevated position on the steering wheel.

Officer Marquez estimated that when he started firing the second time, the truck was no more than 10 feet away. He stated that it took the length of the truck itself for it to come to a complete stop from the point in time he started shooting. He heard someone ask if the driver had a weapon. He looked over at Officer Johnson and told him, "Tac load." After Officer Marquez did a tactical re-load, Officer Johnson did the same thing.

Officer Marquez heard Sergeant Miranda say to have the "SWAT guys" clear the truck. Officer Marquez looked around and saw Officer Gormley and was relieved to see that he was okay. Up until that point in time, he still thought Officer Gormley was possibly dead. Officers Gormley, Johnson and Marquez walked up to the side of the truck and Officer Marquez opened the passenger door of the truck. He did not see any movement by the hunched-over driver. Officer Johnson put the truck in park and turned the ignition off. He leaned into the cab of the truck as Officer Marquez stepped up to cover him in case the driver made any movements. After Officer Johnson turned the truck off, both officers then stepped off the truck.

Statement of Officer Kevin Gormley

On December 23, 2009, Officer Gormley was working a three-man car with fellow Oxnard Police Officers Michael Johnson and Rocky Marquez, as described above. About 1:00 p.m., he overheard Officer Robertson on the radio. Because the only speaker for the police radio is in the front seat, Officer Gormley did not hear the first part of the radio traffic regarding the propane truck. What he did hear was that Officer Robertson was in the process of stopping a propane truck somewhere in the area of Fifth Street or Wooley Road, and Victoria Avenue. Officer Gormley said that their unit does have an MDC; however, because he was in the backseat, he was not privy to the MDC traffic.

Officer Gormley heard Officer Robertson radio that he was in pursuit of the propane truck, and a very short time later, heard him cancel the pursuit because of the danger from the propane. When the pursuit was cancelled, Officer Gormley and his partners were traveling eastbound on Wooley Road near the Five Points intersection. He understood that Oxnard officers were following about two miles behind the propane truck, northbound on Victoria Avenue. About this time, either Officer Marquez or Johnson received a telephone call from Officer Jon Wilkie who told them to head toward the area of the pursuit to assist if necessary.

About the same time, Officer Gormley overheard that the driver of the propane truck was Silas Carpenter. This troubled him. He knew Carpenter from prior incidents and thought Carpenter was “crazy.” He knew Carpenter was a large man and was aware of the incident where Carpenter slashed the taxi driver. He had heard “old timers” talking about a time when Carpenter threw an officer off of a roof. Officer Gormley had arrested Carpenter one time after he was found

running around naked in the middle of the street. Carpenter was “doped up” and Officer Gormley brought him to the Ventura County Medical Center for a medical clearance prior to booking him for being under the influence. Based on his knowledge of Carpenter, it scared him that Carpenter was now “driving a bomb.”

When the pursuit was reinitiated, Officer Gormley and his partners headed northbound on Patterson Road near Wooley Road and they saw the propane truck “fly by” eastbound on Fifth Street. Officer Gormley was shocked by how large the truck was. Several police units were in pursuit as the propane truck headed eastbound. Officer Gormley heard a motor officer say that he was going to direct traffic. Officer Gormley could not remember if this was before or after he first saw the truck, but recalled hearing that the propane truck had attempted to run over the motor officer. Officer Gormley thought to himself, “Oh great, he’s going to try to kill someone, and already tried to kill a motor officer.”

They followed the pursuit from a distance eastbound on Fifth Street from Patterson Road. Officer Gormley could not see the propane truck, but heard someone over the radio advise that the truck was entering the parking lot to the parole office. He did not recall specifically what was said, but based on this radio traffic, the three of them deduced that the propane truck was heading northbound through the parking lot and the only way out of the parking lot was eastbound to Ventura Road. They pulled in through the gas station located on the northwest corner of Ventura Road at Fifth Street in order to cut through the parking lot to reach the east side of the McDonald’s parking lot.

Officer Johnson stopped the car on the east side of the parking lot, adjacent to the planter island that borders the south curb of the northernmost driveway into the parking lot from Ventura Road. As the three officers got out of their vehicle, Officer Gormley saw the propane truck stopped northwest of them in the McDonald's parking lot. Although he had not seen the truck crash into anything in the parking lot, he saw extensive front end damage to the truck. It was billowing smoke and it was obvious that the truck had been in a collision. Based on what he saw, he thought the truck was disabled and they were now going to conduct a high-risk vehicle stop on the driver.

Officer Gormley started to walk northeast through the parking lot when he saw the propane truck reverse a little bit, then "punch it" in drive. The truck quickly accelerated eastbound through the parking lot, then turned southbound, heading directly at him and his partners. Officer Gormley had only walked "just in front of the patrol car" when he realized the propane truck was "coming right for us." He estimated the distance between him and the truck at that moment to be 25 to 30 yards. Officer Gormley saw a black male driver, but did not recognize him as Silas Carpenter. He said that the driver was the only person in the propane truck.

He looked to his right, back at the island thinking he could not jump back into his car for any sort of protection. He thought, "Oh my God! This guy is going to run me over!" For a brief moment, he was uncertain of where he should go to avoid being struck by the truck. He was also thinking of the numerous civilians in the parking lot south of them (Walgreens) as well as McDonald's directly next to them.

He drew his department-issued .45 caliber Heckler & Koch pistol and aimed at the truck. Officer Gormley believed he was just adjacent to the planter at the south side of the driveway when he began shooting. When he fired his first shot, he estimated the truck to be 25 to 30 yards from him, roughly mid-point between the northeastern corner of the parking lot and the driveway entrance where their patrol vehicle was parked. It was clear to him that with its speed, there was no way for the driver to make the sharp left turn necessary to exit the parking lot via the driveway and that the only possible route was “through us.” He could not estimate the speed of the truck as it came at him but recalled hearing the truck’s engine “racing” and knew it was going faster than normal parking lot speed.

He saw Officer Marquez was standing just to his left (closer to McDonald’s) when he began shooting. As the truck got closer, the engine noise got louder, but after the first time he pulled the trigger, he said everything became silent and he did not know if anyone else fired a shot. Officer Gormley estimated that he fired three, four or five rounds at the truck, believing he was about to be run over.

Officer Gormley stopped shooting because “it seemed like” the truck was slowing down, but he immediately realized that the truck was “right on me.” He estimated the propane truck was maybe five yards away when he stopped firing and said he did not understand how he did not get run over.

The truck was in the traffic lane, right in front of him, adjacent to the midpoint of the driveway entrance and still coming when he saw Officer Marquez start to run. He followed and ran

southbound through the parking lot along the passenger side (east side) of their patrol car. He remembers seeing Officer Marquez rounding the rear of the patrol car in front of him when the patrol car began to move. Because his hearing was impaired from the shooting, Officer Gormley did not hear the propane truck crash into their patrol car, but realized it was happening when he saw the patrol car moving. Simultaneously, he began to “fly through the air.” The patrol car struck him on his right side, knocking him into the air. During his interview, he was sore on his right side and had pain in his right shoulder and lower back as a result of being struck by the car.

He landed on his feet somewhere near the rear trunk of the patrol car, immediately changed direction, and ran westbound toward the McDonald’s building. By the time Officer Gormley turned around, he saw the propane truck; still ramming the patrol car. It finally pushed the car out of the way and continued on slightly past it. As this was occurring, Officers Marquez and Johnson moved in front of Officer Gormley, between him and the propane truck. Officer Gormley could see the truck driver and noticed he was looking straight ahead and not at the officers who were to his right. It was obvious to Officer Gormley that the truck was not stopping.

Officer Gormley, knowing the driver was not stopping, was concerned about all the people in the Walgreens parking lot. He had just seen the driver try to kill him and his partners and wanted to shoot the driver to stop the truck; however, Officers Johnson and Marquez were in front of him, directly in his line of fire. Officer Gormley was closer to the McDonald’s building while Officers Marquez and Johnson were in the lawn area bordering the traffic lane, to the east of the McDonald’s building.

As he was processing his options, the truck continued south, coming directly even with Officers Marquez and Johnson and himself. Officers Marquez and Johnson both began shooting at the passenger side door of the truck and the driver. He did not know how many times they fired, but he saw the driver get shot in the right side of his head by one of the bullets. When the two officers began shooting, the truck was still moving. Once he saw the driver hit, the propane truck finally slowed, then stopped.

Now there were about 10 officers all moving toward the truck and Officer Gormley's focus became the smoking propane truck and the propane tanks contained therein. He believed that the truck might blow up at any moment, and when he saw everyone moving toward it, he began yelling for everyone to get away from the vehicle. He also overheard someone say that SWAT needed to clear the truck and the driver for weapons. It was at that point that he and Officers Marquez and Johnson cleared the truck. Prior to them doing so, he recalled Officer Marquez giving the truck driver orders not to move; however, there was no response by Carpenter.

Officers Johnson and Marquez opened the passenger door to the truck with Officer Gormley right behind them as they did so. He believed Officer Johnson reached into the truck and put it into park, then took the key out of the ignition of the truck, or turned it off. It was Officer Gormley's belief, or impression, that Carpenter was dead at that point.

Officer Gormley noted that had he run toward Ventura Road instead of behind the patrol vehicle, Carpenter would have run him over and killed him. Officer Gormley did not recall anyone else

shooting during the incident. He also did not note who else was present at the time of the shooting.

PHYSICAL EVIDENCE/CRIME SCENE

Autopsy of Silas Carpenter

Dr. Janice Frank conducted an autopsy on the body of Carpenter on December 24, 2009. She located four gunshot wounds on Carpenter, two of which were fatal wounds to the right side of the head. There was a nonfatal wound to the right arm and another to the right leg. Dr. Frank also noted that the deceased suffered from chronic obstructive pulmonary disease and that he had a history of bi-polar disorder. The locations of the gunshot wounds are consistent with them being fired by Officers Johnson and Marquez from their position directly east of the McDonald's restaurant.

Toxicology results from blood samples taken from Carpenter after his death tested negative for the presence of illegal substances and alcohol, and positive for several psychotropic drugs (lithium, theobromine, clorpheniramine) and some everyday compounds including caffeine and ibuprofen. The above mentioned psychotropic drugs are drugs commonly used to treat conditions such as that which Carpenter apparently suffered, namely bi-polar disorder.

The results from the toxicology evidence leads to the conclusion that in spite of Carpenter remaining clean and sober as well as continuing to take medications appropriate for someone suffering from bi-polar disorder, he unfortunately and obviously experienced a recurrence of his mental disease which caused severe symptoms including psychosis.

Firearms Analysis

The six officers who fired their weapons fired a total of 32 rounds during the incident. Twenty-six of those rounds were .45 Caliber Winchester and six were 9mm Luger. The .45 caliber rounds are consistent with having come from the Heckler & Koch pistols issued to SEU Officers Johnson, Marquez and Gormley, and the Sig Sauer issued to Detective Baldwin.

From the cartridge casings recovered at the scene, it appears that Officer Johnson fired approximately 12 rounds, Officer Marquez fired approximately nine rounds, Officer Gormley fired three rounds, Officer Swisher fired five rounds, Officer Dobrosky fired one round, and Detective Baldwin fired one round.

As noted above, it is clear that Officers Marquez and Johnson fired the two fatal rounds to the right side of Carpenter's body. However, due to the fact that they were both firing HECKLER & KOCH USP .45 handguns, it was not possible to determine with certainty which officer fired which shot. This is because the HECKLER & KOCH .45 has a barrel with polygonal rifling. Polygonal rifling prohibits the forensic firearms examiner from microscopically measuring the width of traditional land and groove impressions. The lands and grooves inside the barrel of the HECKLER & KOCH .45 have a rounded profile instead of a well-defined rectangular profile which allows for traditional pinpoint identification that, somewhat akin to fingerprint analysis, can match an expended round to a particular gun. However, in the end, given the circumstances of this unfortunate incident, such detailed discrimination in the analysis of the individual rounds fired is unnecessary, as all of the officers who fired at Carpenter did so out of necessity.

LEGAL PRINCIPLES

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

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful.

The law of self-defense and defense of others was codified in 1872 and has remained substantially unchanged since then. It is found in Penal Code sections 197 through 199. It requires that the user of deadly force honestly believes that he or someone else is in imminent and deadly peril, and that a reasonable person in the same circumstances would believe the same and would deem it necessary to use deadly force in order to protect against such peril.

Under California law, anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense, need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See People v. Newcomer (1897) 118 Cal. 263, 273; People v. Dawson (1948) 88 Cal. App. 2d 85, 95.

A police officer may use deadly force where 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; Martinez v. County of Los Angeles (1996) 47 Cal. App. 4th 334.

ANALYSIS

Silas Carpenter unfortunately suffered from the effects of a severe and lifelong mental disorder (likely bi-polar disorder) which apparently re-emerged in the days before his death. For several years before his symptoms surfaced, he was gainfully employed as a driver for AAA Propane. He was an excellent employee, and as such, was entrusted with the care of a 25,000 pound vehicle used to transport flammable propane. On December 23, 2009, Carpenter, apparently having relapsed into a manic psychotic episode, began acting irrationally. He was noted by at least one person who had known him for many years, as being even more “spun” than when he was on drugs in the past.

The driving pattern that Carpenter exhibited all the way from the Simi Valley Moorpark area, to his final location represented a clear and immediate danger to all of the citizens he encountered along the way. Beginning with the initial calls to 911 and to Mr. Simpson, through the pursuit initiated by Officer Robertson, the collision with the vehicles at the intersection of Victoria Avenue at Wooley Road, the attempt to strike Officer Orozco at the intersection of Fifth Street at Victoria Avenue, the striking of Mr. LaFreniere’s truck and the final collisions into Officer Holguin’s patrol car and the SEU vehicle, it was clear that Carpenter was dangerously out of touch with reality. Recklessly driving a truck loaded with more than 60 canisters of propane in an area heavily populated during the lunch hour, Carpenter had the present ability and apparent intent to cause death or great bodily injury to a large number of people. Had the truck crashed into the restaurant, caught fire, exploded, or any combination of these very possible outcomes, the potential loss of life could have been massive. His actions objectively demonstrated that his irrational intent was to cause harm to himself or others or both.

CONCLUSION

It is impossible to know with one hundred percent certainty whether Carpenter was able to comprehend the officers' commands to stop the vehicle at any single point in the sequence of events. He acknowledged Officer Robertson as a police officer, but failed to yield to the officer's directives. He intentionally collided into the motorist at Wooley Road and Victoria Avenue. He also made an apparent conscious effort to strike Officer Orozco based on the officer's description of the event. Whether he intended to strike Mr. LaFreniere's truck is open to debate, but it is undeniable that when he began speeding once again through the McDonald's parking lot, he represented an immediate and lethal threat to the officers and civilians in his path.

It is crucial to note that all six officers who fired at Carpenter each had the same reaction to what they were watching: the truck needed to be stopped and the only way to stop it was to stop the driver. They did what their duty required of them. These officers were all justified in their use of deadly force.