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## ORVIL LOGE

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September 10, 2015

Special Agent Dale Fine  
Oklahoma State Bureau of Investigation  
125 W. 15<sup>th</sup> Street  
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Sheriff Charles Pearson  
Muskogee County Sheriff  
220 State Street  
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Chief Terry Thompson  
Warner Police Department  
P.O. Box 170  
Warner, OK 74469

Chief Jimmy Catron  
Porum Police Department  
P.O. Box 361  
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RE: Custodial death of David Cody Lynch  
Date of Occurrence: April 3 through April 4, 2015

Dear Special Agent Fine, Sheriff Pearson, Chief Thompson and Chief Catron:

This letter is to advise you of my decision in the custodial death of David Cody Lynch, by Warner Police Officer Michael Shamblin, Porum Police Officer Jack Denny and Jerome Wildcat, and Muskogee County Sheriff Deputy Derek Apple; which

occurred on April 3 through April 4, 2015, in Muskogee County, Oklahoma. I have reviewed the entire investigation file submitted by OSBI and issue the following Summary of Facts and Conclusions of Law. If you have any questions, please contact me.

### **Summary of Facts**

1. On April 3, 2015, at 23:35 Warner Police Officer Michael Shamblin #5506, responded to what was reported as a vehicle accident north of Warner, at State Highway 64 and East 153 Street, South in Muskogee County.
2. Officer Shamblin arrived on the scene at 23:40 hours and saw two parked trucks. He spoke briefly to the two individual drivers and advised dispatch that Oklahoma Highway Patrol was not needed, but he would need a deputy because one of the drivers appeared to be intoxicated; that person was later identified as David Cody Lynch.
3. Officer Shamblin asked Lynch numerous times to get out of the road and step to the back of his car where it was safe. Lynch eventually complied and while Officer Shamblin was questioning him, Lynch began mumbling incoherently. Officer Shamblin leaned closer to Lynch to hear him, and Lynch punched him in the face. A struggle ensued, and Lynch hit Officer Shamblin several more times in the face until Lynch was taken to the ground.
4. The two rolled around on the ground and eventually Officer Shamblin got on top of Lynch and was trying to control his hands. They ended up in a ditch – their heads were facing up hill and their knees and feet were in the ditch; both men were wet and muddy.
5. Officer Shamblin advised that at this point he became aware that several other people were there because he could see their feet, and Lynch was yelling for them to attack Officer Shamblin repeatedly. Due to the situation, Officer Shamblin advised Lynch that if he didn't comply with his directives, he was going to deploy his taser.
6. Lynch continued to threaten and fight Officer Shamblin and so he was tased for one to two seconds. Lynch reached up, grabbed a barb and pulled it out. Officer Shamblin told the bystanders that he needed them to call 9-1-1 immediately or he was going to have to shoot Lynch.

7. Muskogee County Deputy Derek Apple #5132 responded to the original call and at 23:50 he was notified by dispatch that Officer Shamblin requested him to hurry because he needed immediate help. He arrived at 23:58.
8. Porum Police officers Jack Denny #4003 and Jerome Wildcat #4004 responded to dispatch at 23:54 and arrived on scene at 23:58.
9. After the 9-1-1 call, Lynch's father approached and put his knee in Lynch's back, slapped him in the face and said, "Boy, give him your damn hand." Officer Shamblin was able to get Lynch handcuffed at that time.
10. The other officers arrived a short time later. Deputy Apple searched for Officer Shamblin's missing equipment while Officers Denny and Wildcat relieved Officer Shamblin. Officer Denny noted that Officer Shamblin was covered in mud and his eyes were almost swollen completely shut. Officer's Shamblin had been punched in the face by David Cody Lynch multiple times, resulting in a fracture to his left orbital eye socket. In addition, his duty belt was broken during the struggle, and it took some several minutes before his taser, spare magazine, and radio were located.
11. Officer Shamblin went to his trunk and retrieved some additional restraints for transporting Lynch. When he got back Lynch was still combative. He was yelling, cursing, he bit at Officer Denny's legs and attempted to grab Officer Wildcat's firearm from his drop holster on two occasions. Despite Lynch's behavior, once Officer Shamblin returned with the restraints, they were able to get him secured.
12. The officers all noted that at that moment Lynch went from "screaming, hollering, and biting, to nothing, just like he flipped a light switch." Lynch stopped breathing and they could not locate a pulse. The time was 00:07. They began CPR immediately. A female on scene requested the officers to remove the handcuffs. They did and again started CPR. Lynch never had any difficulty breathing prior to this point. The officers noted that his face was never obstructed, in particular, his airway, including his mouth and nose was never obstructed.
13. Deputy Robert Jackson #5134 arrived at 00:07. He exited his vehicle and heard someone say "he's not breathing," so he notified dispatch to alert EMS at 00:08. Officer Denny and Alyssa Hafenbrack (a bystander) performed CPR on Lynch until EMS arrived and took over. Lynch was then transported to the hospital. Multiple people reported seeing a dark liquid come out of Lynch's mouth, and at the hospital Eastar noted "a large amount of black fluid coming from mouth and

nose.” Lynch was pronounced dead at the hospital and at 03:53 the body was released to the Medical Examiner’s office (tag #7083163).

14. Trooper Levi Watson #580 arrived at approximately 00:26, and spoke to Marshall Lynch. He told the trooper that he was the driver of the other vehicle and that he and Cody Lynch had left a residence at the same time. Cody Lynch had been driving erratically before getting stuck in a ditch. When he approached Cody, he was assaulted physically; and began to fight with him. He could not be calmed down. (Marshall Lynch did not provide this information in his written statement).
15. A video recording was made by a family member using a phone that captured some of the event. A review of the recording confirms that Lynch was combative, non-compliant and impervious to pain compliance. His face and airways were never obstructed by law enforcement.
16. Despite numerous attempts of David Cody Lynch to encourage his family and friends to intervene and combat Law Enforcement, they never did.
17. Cheryl Niblo, D.O. of the Medical Examiner’s Office performed an autopsy of David Cody Lynch. Her findings for cause of death was:
  - A) Asphyxia due to physical restraint
  - B) Acute Intoxication by methamphetamine
  - C) Hypertensive cardiovascular disease
  - D) Electric shock weapon discharged
  - E) Toxicology results indicate blood alcohol was .12, methamphetamine was 2.5 mcg/ml and amphetamine was less than .65 mcg/ml
  - G) The manner of death was Homicide.
18. Based on the opinion of the Medical Examiner, I requested the “Use of Force Policy” from the Warner Police Department and Porum Police Department. I then forwarded the policy with a copy of the videos taken by the family at the scene and the Medical Examiner’s report to Melvin Murphy of Global Tactics, LLC. of Plantation, Florida. I requested an opinion of whether the officers were justified in their use of force of David Cody Lynch.

19. Global Tactics opinion:

- A) The officer(s) were justified in the Use of Force applied to gain lawful compliance to execute an arrest based upon objective reasonableness. (Graham vs. Conner)
- B) The officer(s) were justified in the applying of such force to execute a lawful seizure of subject David Cody Lynch based upon probable cause. (4<sup>th</sup> Amendment)
- C) The officer(s) were in compliance of their Departmental Policy and Oklahoma State Statute for executing an arrest.
- D) The officer(s) showed a vast amount of professional restraint by using less force during their lawful attempt to modify the subject's behavior and gain lawful compliance of a violent, combative and defiant subject.
- E) The handcuffing technique demonstrated by the placing of a knee between the subject's scapulas is an approved defensive tactics handcuffing technique.
- F) The placement of the officer's knee between the subject's scapulas illustrated a side view of the subject's face next to the left foot of the officer during custodial touch and control. This technique is in no form deemed a choke hold.
- G) The custodial touch that was maintained during the violent encounter and after handcuffing is justifiable and deemed as an appropriate use of force.

### **Conclusions of Law**

- 20. On April 3, 2015, David Cody Lynch unlawfully Operates a Motor Vehicle while Under the Influence of Methamphetamine and Alcohol.
- 21. David Cody Lynch unlawfully committed an Assault and Battery upon a Police Officer, by striking and fighting Officer Michael Shamblin.
- 22. David Cody Lynch unlawfully Resisted Arrest and Obstructed Officers in the performance of their legal duties.
- 23. David Cody Lynch made statements during his detention to encourage other members of his family and friends to assist him in his unlawful activities.
- 24. Officers Shamblin, Wildcat, Denny and Deputy Apple were acting within the scope and course of employment as a police officers on April 3 through April 4, 2015.

25. Said Officers used appropriate force at all times during their contact with David Cody Lynch.

26. Officer Michael Shamblin's actions against David Cody Lynch were legally justified.

27. Deputy Derek Apple's actions against David Cody Lynch were legally justified.

28. Officer Jack Denny's actions against David Cody Lynch were legally justified.

29. Officer Jermone Wildcat's actions against David Cody Lynch were legally justified.

Respectfully Submitted,

Orvil Loge  
District Attorney