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January 12, 2024

Sheriff Donny Youngblood
Kern County Sheriff's Office
1350 Norris Road
Bakersfield, CA 93308

Re: KCSO Officer-Involved Shooting of Kevin Romero on November 27, 2022
Kern County Sheriff's Deputies Ryan Delahuerta and Michael Moreno
N. Maple Street in Wasco, CA
Documented in KCSO Report 2022-0139298

Dear Sheriff Youngblood,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed the reports and other materials submitted by your agency regarding the shooting noted above. The Officer Involved Shooting Committee reviews cases for criminal liability under state law. The Committee has completed its review. The findings are noted below.

Summary

On November 27, 2022, at about 1:00 a.m., Kern County Sheriff Deputies responded to a location in Wasco to investigate a shots-fired call. A vehicle occupied by Joel Yerena and Kevin Romero fled from the scene. After responding deputies engaged in a vehicular pursuit, the driver, Joel Yerena, crashed his vehicle at 650 N. Maple Street in Wasco. After the vehicle collision, Deputy Delahuerta ordered the driver, then the passenger out of the crashed car. The driver, Yerena, complied with the deputy's orders to get on the ground. In contrast, the passenger, Romero, did not comply with Deputy Delahuerta's commands or respond to Deputy Moreno's statements that he would taze him if he did not comply. Despite the clear, loud, lawful and repeated orders to get on his stomach and to get on the ground (and the fact that Yerena was on the ground next to the car), Romero stood up and began walking away from Deputies Delahuerta and Moreno toward the back of the crashed car with his right hand up and open and with his left hand concealed behind his body. As Deputy Delahuerta approached Romero, he observed a firearm and stated "Handgun, he's got a handgun." Following the announcement, Deputy Delahuerta briefly paused at which point Romero moved his left hand

toward his waistband in an apparent effort to reach for the firearm, while his right hand remained raised and toward deputies. Romero then moved his right hand toward his waistband, in what appeared to be an attempt to transfer the firearm in Romero's left hand to his right hand. Deputies observed Romero's effort to better obtain the firearm and, perceiving Romero as an imminent threat, fired at Romero. The time from when Deputies first saw and announced the presence of the firearm to the time Romero reached with his right hand for the gun was two seconds. A review of the body-worn camera video strongly suggests that Romero positioned himself to best conceal his efforts to obtain the firearm, which would provide him a position of advantage over the deputies. After the initial volley of shots, Romero fell to the ground. Deputy Moreno stated "cover him…" but was cut off when Romero sat up and lifted his handgun toward the deputies. Deputy Delahuerta believed Romero was going to shoot at him or Deputy Moreno, so he fired again approximately 4-5 times to stop the threat. Deputy Delahuerta approached Romero and kicked the gun away. He then placed Romero in handcuffs, believing he might have more than one firearm. After searching Romero, Deputy Delahuerta began rendering medical aid.

Romero survived his injuries and later resolved his criminal case by entering a plea of no contest to a felony charge of Assault with a Semi-Automatic Firearm. Romero was sentenced to three years in prison in September of 2023 in case BF192415A.

Legal Principles and Analysis

Penal Code 835a(a)(3) states, "the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies." Penal Code section 835a(c)(1)(A) reads in part, "[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary…[t]o defend against an imminent threat of death or serious bodily injury to the officer." (Pen. Code, § 835a(c)(1).) A peace officer is also justified in using deadly force "[t]o apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended," and, "[w]here feasible… prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Pen. Code, § 835a(c)(1)(B).) Putting a suspect on notice may include objective demonstrations of intent, such as a raised firearm. (*Estate of Morgan v. Cook* (8th Cir. 2012) 686 F.3d 494, 498.) For instance, when an officer raises his firearm and points it at a suspect, that should put the suspect on notice that "escalation of the situation would result in the use of the firearm." (*Ibid.*)

In *Graham v. Connor* (1989) 490 U.S. 386, the Supreme Court clarified that the "reasonableness" test is an objective one, rather than subjective, but that the analysis should consider the perspective of a reasonable officer in the same position: "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of

hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split- second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation. As in other Forth Amendment contexts, however, the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation ." (Id. at 396).

A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self- defense by the use of objectively reasonable force. *See* Penal Code 835a The use of deadly force is justified where three elements are met: 1) A person reasonably believes that he, or someone else, is in imminent danger of being killed or suffering great bodily injury, 2) the person reasonably believes that the immediate use of deadly force is necessary to defend against that danger, and 3) the person used no more force than was reasonably necessary to defend against that danger. (Penal Code section 197; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; CALCRIM 505). There is no duty to retreat from the danger. (*People v. Hughes* (1951) 107 Cal.App.2d 487, 493; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22; CALCRIM 505).

Deputy Delahuerta had just been to a scene where gunshots were heard, thereby justifying his belief that someone involved with the pursuit that followed shortly after had access to a firearm and that the firearm was loaded. Romero refused commands and moved in a manner consistent with hiding what he was doing with his left hand. Deputy Delahuerta then saw the firearm and saw Romero reach for the handgun. Deputy Delahuerta at that point began backpedaling and was in fear for his life, knowing he had no cover and Romero had a handgun. It would have taken Romero less than a second to train the firearm on Deputy Delahuerta or Deputy Moreno and pull the trigger. Deputies confirmed they were in fear of Romero's potential use of the handgun during the incident, and their concern was reasonable considering the circumstances of the encounter. Romero's intent was further evidenced when he raised the firearm toward deputies after he was already on the ground, which was verified by the body worn camera video.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department, Deputies Ryan Delahuerta and Michael Moreno responded reasonably in self-defense and defense of each other to the threat presented by Romero's actions. There is no state criminal liability for their use of deadly force under the circumstances of this case and the shooting is legally justified.

Sincerely,

Cynthia Zimmer

Cynthia J. Zimmer
Kern County District Attorney