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

Chief Greg Terry
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

**Re: Officer-Involved Shooting of Richard Firo by Bakersfield Police Sergeant J. Rodrigues,
Bakersfield Police Officer I. Beltran and Bakersfield Police Officer R. Ludeke.**

Dear Sheriff Youngblood and Chief Terry:

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 Tuesday January 17, 2023, Officers with the Bakersfield Police Department responded to 7701 Cibola Drive regarding a check the welfare for a female that was possibly in distress. Law enforcement received information that a woman was being held inside of the residence by Richard Firo, who had threatened to shoot her if police were called. Upon arrival at the residence, officers attempted to make telephonic contact with the occupants of the residence but those attempts were unsuccessful.

After approximately five minutes of call outs over the loudspeaker a woman exited the residence with her hands up. As she was walking away from the house, Firo began shooting at officers from the front window of the residence. Firo continued to fire at officers sporadically over the course of several hours. During the periods of time when Firo was actively firing at officers, three separate officers fired back at him. Those officers were Sergeant Rodrigues, Officer Beltran and Officer Ludeke. Firo shot his firearm prior to any officers firing theirs. Additionally, the officers discussed herein only fired their

weapons in response to Firo firing his. During the periods when Firo was not firing, officers likewise did not fire their weapons. Firo engaged officers in this stand off for several hours.

During this standoff, Lt. Anderburg was able to speak to Firo by telephone. For several hours Firo stated that he would not go to prison and would not exit the house. Ultimately the SWAT team deployed chemical munitions into the residence forcing Firo to exit. Firo exited the residence unarmed however he continued to disobey orders and resist officers. Firo finally stopped resisting and said “Done! I am done!” and was successfully taken into custody. Firo was taken to Kern Medical Center for medical clearance, while at the hospital he stated “I got an ass kicking coming. I shot at the fucking cops.”

Legal Principles and Analysis

In this case, Sgt. Rodrigues, Officer Beltran and Officer Ludeke used deadly force in response to the deadly force that was being used by Richard Firo.

A peace officer includes any deputy sheriff of a city or county, who is employed in that capacity (Penal Code section 830.1). That peace officer’s authority extends to any place in the state where any public offense is committed in the peace officer’s presence and with respect to which there is immediate danger to person or property or of the escape of the perpetrator of the offense (Penal Code section 830.1(3)). Sergeant Rodrigues, Officer Beltran and Officer Ludeke are all officers employed by the City of Bakersfield. Thus, they are peace officers within the meaning of Penal Code section 830.1. In this case, Firo shot at officers off and on for several hours while inside of his residence. During this time officers were at a disadvantage as Firo was protected by his house and officers were outside in the open. Firo’s actions put all officers as well as any civilians that were in the area at substantial risk of serious harm or death.

Since Sergeant Rodrigues, Officer Beltran and Officer Ludeke were all acting as peace officers and were all on duty as peace officers at the time of the incident, their conduct is judged by the same standard used for all peace officers. An officer with reasonable cause to believe a crime is committed or a person is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *see also* Penal Code section 835a(b). An officer may use deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (CA Penal Code section 835(c)(1)(A)).

When evaluating the use of deadly force, one must decide whether the officers’ beliefs and actions were objectively reasonable under all the circumstances known to him or her, as they appeared at the time. “The calculus of reasonableness must embody allowance for the fact that peace 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.” *Graham v. Connor*, *supra* at pp. 396-397. In this case, all of the officers reasonably believed a crime was being committed and that deadly force was necessary, as they observed Firo shooting at law enforcement. During the hours long stand off, Firo continued to sporadically shoot at officers. Any belief that deadly force was necessary was reasonable under the circumstances.

The law does not impose a duty to use less lethal options. “Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to

decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.” *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, 915). The appearance of danger is all that is necessary; actual danger is not. *People v. Toledo* (1948) 85 Cal.App.2d 369 (*overruled on other grounds*); *People v. Jackson* (1965) 233 Cal.App.2d 639. “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.” *Graham v. Connor*, supra, 490 at p. 396.

In this case, every officer on scene was at risk of being harmed or killed by one of Firo’s shots. Not only was Firo actively shooting at officers he was doing so from inside of the residence. Firo’s actions put officers at a great disadvantage as they could not always see where Firo was shooting from or when the shots would resume after the breaks. In this case, officers were in actual danger from Firo’s actions, danger that could only be met with deadly force. Even though officers are not required to use less lethal options, in this case, there are not any less lethal options that would have protected the officers from Firo’s actions.

Sergeant Rodrigues, Officer Beltran and Officer Ludeke’s use of force was justified to protect themselves, other officers on scene, as well as any civilians that may have been in the area. It is important to note that Firo initiated the shooting, and no officer shot until Firo began shooting at them. During the hours long standoff there were periods where Firo would cease firing, during those periods, Sergeant Rodrigues, Officer Beltran and Officer Ludeke would also pause their firing. All firing that occurred by Sergeant Rodrigues, Officer Beltran and Officer Ludeke was directly in response to shots by Firo in an attempt to stop him from shooting and to protect everyone around. Once Firo exited the residence unarmed and officers recognized that there was no longer a threat of death or serious bodily injury all shooting stopped. Shots were only fired to the extent necessary to combat the threat that was being posed by Firo’s actions.

Conclusion

Based upon a review of the evidence submitted by the Bakersfield Police Department, Sergeant Rodrigues, Officer Beltran and Officer Ludeke all responded reasonably in self-defense and defense of others to defend against an imminent threat of death or serious bodily injury posed by Firo. There is no state criminal liability for his use of deadly force under the circumstances of this case and the shooting is legally justified.

Sincerely,

Cynthia J. Zimmer
District Attorney