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July 29, 2019

Chief Scot Kimble
Arvin Police Department
200 Campus Drive
Arvin, CA 93203

Re: Fatal shooting of Richard Posadas on December 5, 2018 by APD Officers Kevin Archuleta and Aldo Ornales; APD Case# 18-1756; KCDA SIU Case# 1-18-192

Dear Chief Kimble,

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

Summary

On December 5, 2018, family members at 933 Wernli Court in Arvin called the police because Richard Posadas was threatening to stab them. They described the weapon in a variety of ways: a metal stake, a knife, and an ice pick. Officers Archuleta and Ornales arrived first and contacted Posadas in the hallway of the residence. Officer Archuleta was aware Posadas had recently been released from prison for stabbing someone with an ice pick. The officers attempted to talk him down, but Posadas would not drop the weapon, and insisted they would have to kill him. Officer Archuleta tased him, but Posadas did not comply. Officer Ornales tased him, but Posadas did not comply. Sgt. Stewart arrived and tased him twice. Posadas pulled the taser probes out each time. He continued to hold his weapon.

The officers made further verbal commands to drop the weapon with their firearms drawn. Officer Archuleta pleaded, "Please dude. Please, don't make us do this." Posadas responded, "You're gonna [expletive] hurt me, or I'm gonna hurt you." Posadas then charged towards

Officer Archuleta. Officers Archuleta and Ornales fired their service weapons and Posadas fell back momentarily after being shot. The officers stopped shooting. Posadas then charged again, and the two officers fired again. Posadas fell at Officer Archuleta's feet after the second shooting. He was pronounced dead at the scene. His weapon turned out to be a nine-inch metal stake. Toxicology reports show Posadas was intoxicated by both alcohol (.10% BAC), and methamphetamine.

Legal Principles and Analysis

Any object can be a deadly weapon when used in a manner capable of producing death or great bodily injury.¹ Here, Posadas threatened to stab people with the nine-inch metal stake. Fear of being stabbed is what led to the 911 call. The officers were also in fear of being stabbed by Posadas, particularly when he told Officer Archuleta, "You're gonna [expletive] hurt me, or I'm gonna hurt you." The evidence supports that Posadas threatened to use the stake in a dangerous way—sticking it into people rather than the ground. This type of use makes the metal stake a deadly weapon.

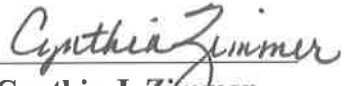
A homicide is justified by a peace officer when necessary to overcome actual resistance to the discharge of his legal duty.² A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of others. Additionally, an officer who has a reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance.³

In this case the officers used every other non-lethal means they believed was available prior to using their firearms. They used verbal commands, verbal commands coupled with Tasers drawn, four tasings, and verbal commands coupled with firearms drawn. Despite all of these efforts Posadas still charged Officer Archuleta armed with the metal stake.

Conclusion

Based on a review of the evidence, Officer Archuleta reasonably acted in self-defense, and Officer Ornales reasonably acted in defense of Officer Archuleta. There is no state criminal liability for the officers in this case because the shootings are legally justified.

Sincerely,


Cynthia J. Zimmer
District Attorney

¹ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029; *People v. Brown, supra*, 210 Cal.App.4th at pp. 7, 11; *In re Brandon T.* (2011) 191 Cal.App.4th 1491, 1496.

² Penal Code 196

³ *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386