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August 12, 2019

Chief Lyle Martin
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

**Re: Officer-Involved Shooting of Jose Reyes by BPD Officer Brendan Thebeau on
June 25, 2018; 5200 Block of Union Ave; BPD case# 18-125277**

Dear Chief Martin,

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

Summary

During a traffic stop on June 15, 2018, Jose Reyes failed to comply with BPD Officer Brendan Thebeau's orders. Reyes fled from the car and ran away along Union Avenue. Reyes dropped a loaded gun in the street as BPD Officer Thebeau ran after him. Reyes continued running but turned and looked back at Officer Thebeau. As he looked back at Officer Thebeau, the officer saw the barrel of a second firearm pointed back at him while Reyes was running forward. In fear of being shot, Officer Thebeau fired his service weapon seven times. Reyes was hit in the arm and once in the lower back. Reyes fell to the ground and had his loaded firearm just inches from his hand on the ground next to him. Reyes recovered from his injuries. He was later convicted of Felony Assault with a Firearm on Officer Thebeau (Penal Code 245(d)(2)), and sentenced to seven years in state prison.

Legal Principles and Analysis

Officer Thebeau had to make a split-second decision upon seeing a firearm pointed at him. A study entitled, "The Reasonableness of Reaction Time," conducted numerous simulations where

officers knew they were responding to a call of a person with a firearm and were looking for a firearm when they made contact. A split-second decision had to be made based upon the reaction or lack thereof by the suspect. Even though the officers already had their guns drawn and pointed at the suspects—they were still shot at and hit by half of the suspects where the suspects attempted to shoot them. The authors concluded that “even when a police officer has his or her gun aimed at a suspect and the suspect is not aiming at the police officer, the police officer is still in extreme danger.”¹ Officer Thebeau was in extreme danger based upon the studies noted above. He was in greater danger than what was presented in the study given that in this case Reyes had already pointed his loaded firearm at Officer Thebeau before Thebeau had drawn his service weapon.

Use of force by a police officer is set forth in Penal Code section 835a. “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.” Officer Thebeau also has a legal right to self-defense as a citizen. In California this includes having no duty to retreat from danger. A person is entitled to stand his ground and defend himself.² Furthermore, an officer shall not be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.³

The United States Supreme Court has addressed reasonable use of deadly force versus excessive force. “It stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.”⁴ In the present case, Officer Thebeau fired seven times in one rapid succession. Reyes was struck twice. Once on the ground, Reyes still had his loaded gun within inches of his hand. Although still in danger, Officer Thebeau stopped firing because he no longer felt that he was in *imminent* danger. The number of shots fired by Officer Thebeau was not excessive. He fired when there was an imminent threat to his life, and then stopped when the imminent threat ceased.

Conclusion

Based upon a review of the evidence, Officer Thebeau responded reasonably to a perceived threat in self-defense. There is no state criminal liability for Officer Thebeau’s use of force under the circumstances of this case because the shooting is legally justified.

Sincerely,


Cynthia J. Zimmer
District Attorney

¹ “Reasonableness and Reaction Time,” by Professor J. Pete Blair, published in *Police Quarterly* 2011.

² *People v. Hughes* (1951) 107 Cal.App.2d 487, 494; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22.

³ PC 835a; See also *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386.

⁴ *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012