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October 5, 2020

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

Re: Officer-Involved Shooting of Charles Walsh by Sgt. Michael Dorkin, Sr. Dep. Joseph Mountjoy, and Dep. Kevin Giorgio on March 23, 2020 at 3019 Pat Avenue in Mojave. KCSO report number #2020-00045556.

Dear Sheriff Youngblood,

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

On March 23, 2020, fifty-year-old Charles Walsh was living with his seventy-one-year-old mother in an apartment in Mojave. After three days straight of drinking during the COVID-19 quarantine, Walsh became drunk and began acting bizarre. He struck his mother in the face. She was injured with a one-inch laceration above her left eye. She called the police and explained her son's drunken, bizarre behavior. She also warned deputies that he had several firearms.

While deputies were outside the apartment, Walsh suddenly began shooting at them from the front door of the apartment with a 9mm handgun. They took cover and three officers returned fire. Walsh then began to shoot at them with a 12-gauge shotgun. Walsh was struck by rifle fire at center mass several times, but he continued firing at the officers. Walsh had on body armor and it was not until he was shot through the chin that he stopped firing at officers. The injury was lethal, and Walsh was pronounced dead at the scene. None of the officers were injured.

Legal Principles and Analysis

Under Penal Code section 835a(c)(1)(A), an officer is justified in using deadly force 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 or to another person.

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(a)(4) states, “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.”¹

A peace officer who makes or attempt 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(d).

A nearby neighbor observed that officers got down when the first round of shots was heard. It was clear to him that Walsh shot first. Walsh’s mother told detectives, “Oh my God, I thought he was killing police. How can he do that?” Walsh fired at the officers eight times with his handgun and three times with his shotgun. Sgt. Dorkin and Dep. Giorgio feared for their lives. Dep. Mountjoy feared for the lives of his partners. The shots fired by the three officers were in response to being fired upon. The law does not require them to retreat. As officers they are allowed to utilize general principles of self-defense as well as use deadly force in compliance with Penal Code section 835a.

Even if acting in self-defense or defense of others, the officers cannot respond with excessive force. The force used must be reasonable under the circumstances. The officers fired a total of thirty-six rounds with their rifles. Sgt. Dorkin fired his rifle nineteen times at Walsh. Dep. Mountjoy fired his rifle ten times. Dep. Giorgio fired three to four times. However, these shots fired did not end the conflict. Even though the deputies had struck Walsh in the initial shooting his body armor protected him from significant injury—he did not even get knocked down. There was a pause after this initial round of shooting by the three officers.

Walsh then fired with his shotgun. Dep. Giorgio fired a second time in response to Walsh with another three to four rounds (he fired seven rounds total). This second shooting ended the conflict. There were no more shots fired by officers once Walsh went down and was no longer shooting at them. “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.” *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012, 2022.

¹ This standard of review from PC 835a is consistent with decades of Federal precedent stemming from *Graham v. Connor* (1989) 490 U.S. 386.

Conclusion

Based upon a review of the evidence submitted by KCSO, Sgt. Dorkin, Sr. Dep. Mountjoy, and Dep. Giorgio each responded reasonably to a lethal threat in self-defense, and defense of others. There is no state criminal liability for their uses of deadly force under the circumstances of this case because the shooting is legally justified.

Sincerely,

A handwritten signature in black ink that reads "Cynthia J. Zimmer". The signature is written in a cursive, flowing style.

Cynthia J. Zimmer
District Attorney