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January 4, 2021

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

Re: Officer-Involved Shooting of Heriberto Rodriguez by Deputies Ashley Sanchez, Angel Leiva, and Aaron Carrillo on December 28, 2019 at 1009 Water St. Apt. B in Bakersfield. KCSO report number #2019-00206800.

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 December 28, 2019, KCSO deputies received a call of domestic violence¹ at the above listed address. At the residence they found Heriberto Rodriguez. He would not comply with verbal orders from deputies to keep his hands out of his pockets, to surrender himself, nor to stay away from a set of pruning shears on the sidewalk by the front the residence. When Rodriguez reached for the shears a Taser was deployed at the same time a K9 was about to be deployed. The K9 deputy told the deputy with the Taser to stop so the dog would not be tased. During this moment, Dep. Sizemore approached Rodriguez from the side and attempted to strike him with a baton. He failed in this effort as Rodriguez not only kept the shears but turned and struck Dep. Sizemore in the face with the shears, injuring him. Rodriguez then attempted to move towards the other officers and strike them with the shears. Deputies Sanchez, Leiva and Carrillo fired their service weapons at Rodriguez to stop him from harming any other deputies. Rodriguez continued to resist while on the ground after being shot. However, he eventually succumbed to the gunshot wounds and was pronounced dead at the scene. A large amount of methamphetamine was discovered in his blood following the autopsy—2400 ng/mL.

¹ A neighbor told detectives that she saw Rodriguez's wife loading up her vehicle when Rodriguez came and picked her up off of the ground and threw her into the side of their residence. Rodriguez's wife then ran inside the house and closed the door. She saw Rodriguez kick the front door.

Legal Principles and Analysis

California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury. (CALCRIM 3470) An officer who uses deadly force must actually believe that the force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.)

Non-lethal efforts were attempted for a considerable amount of time. Rodriguez continuously refused to comply with verbal commands and instead threatened the deputies. A K9, taser, and baton were all unsuccessfully used to get Rodriguez to drop the shears and submit to an arrest. Instead, Rodriguez used the shears to assault and injure Dep. Sizemore. He then turned to attack the other deputies.



Still from Dep. Garcia's BWC as he is treating Dep. Sizemore at the scene.



Dep. Sizemore after having the laceration above his right eye glued together at KMC.



Pruning shears used by Rodriguez to strike Dep. Sizemore. The handle was broken during the shooting.

Is a firearm versus pruning shears a reasonable response?

It depends on how the pruning shears are being used. If for their intended purpose, to prune plants, then probably not. However, if the shears are used as a wooden/metal club, then it is. "A deadly weapon is any object, instrument or weapon that is used in such a way that it is capable of causing and likely to cause death or great bodily injury." (CALCRIM 3130) Great bodily injury includes significant or substantial physical injury. It is an injury that is greater than minor or moderate harm. (CALCRIM 3130)

Dep. Sizemore was described as having been disoriented and in a daze. He was cut above his right eye. He said it felt like his head was split open. The three deputies that fired all believed that Dep. Sizemore had been significantly harmed and that further great bodily injury was at stake when Rodriguez swung the shears again at Deputies Garcia and Leiva.



Dep. Garcia's BWC shows Rodriguez swinging shears at him and Dep. Leiva after injuring Dep. Sizemore.

Was shooting at Rodriguez nine times by the three deputies excessive force?

Plumhoff v. Rickard (2014) 134 S.Ct. 2012 addresses the question of whether or not the degree of deadly force used is excessive. The specific question in the case is if the officers were constitutionally permitted to open fire, did they go too far by firing fifteen rounds? In concluding the officers' use of force was reasonable the Court states, "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." *Id.* at 2022.

The nine shots by the three deputies was essentially simultaneous and in one rapid succession. Body worn camera footage from all of the deputies present shows that Rodriguez still had the pruning shears in his hands when the shooting occurred. The video also shows that the deputies all stopped firing once Rodriguez fell to the ground and dropped the shears.



From Dep. Leiva's BWC you can see Rodriguez still holding the shears as he is being shot.

The shears were still close to his hands when the shooting concluded. Dep. Sanchez still felt that he was a threat. Rodriguez still resisted being arrested even after being shot. Dep. Garcia was shocked by his physical strength and pain tolerance. The Coroner report shows that Rodriguez had an extremely high amount of methamphetamine in his system.

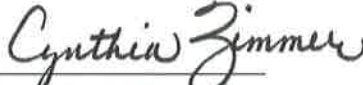
Despite the fact that Rodriguez continued to resist after a baton strike, K9 bite, taser and being shot several times, no further lethal force was used. The deputies considered him a threat still, but not an imminent threat once he was on the ground and the shears were out of his hands. No further deadly force was utilized once the imminent threat ceased.

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Conclusion

Based upon a review of the evidence submitted by KCSO, Deputies Sanchez, Leiva, and Carrillo 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,


Cynthia J. Zimmer
District Attorney