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

Re: Officer-Involved Shooting of Jacob Morales by Deputy Christopher Gonzalez and Sergeant Justin Weidenkopf on June 12, 2020 at 316 Water Street in Bakersfield. KCSO report number 2020-00084192

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 Officer-Involved Shooting Committee reviews cases for criminal liability under state law. The Officer-Involved Shooting Committee has completed its review. The findings are noted below.

Summary

On June 12, 2020, law enforcement officers with the Kern County Sheriff's Department were dispatched to an apartment complex in the 300 block of Water Street. The reporting party contacted 911 numerous times and told dispatchers that Jacob Morales was in violation of an active restraining order and was pounding on the door and trying to force his way into the reporting party's apartment. The reporting party was fearful that Morales might be able to gain entry into the apartment. Before law enforcement officers made contact with Morales, they were notified that Morales had a gun and that he was acting erratically, and that at one point Morales was waving the gun around in the courtyard of the apartment complex. The reporting party told dispatch—who relayed the information to law enforcement officers who were enroute to the call—that Morales appeared to be under the influence of Methamphetamine. Before officers approached Morales, they also learned from dispatch that he had an active arrest warrant for violation of post release community supervision.

Law enforcement officers simultaneously approached the courtyard of the apartment complex from the north and the south, in groups of two. At one point, the two officers positioned north of the courtyard saw Morales, and those officers immediately began commanding Morales to show his hands. Morales looked at the officers and then ran south, directly towards Sergeant Justin Weidenkopf and Deputy Christopher Gonzalez, who were positioned at the southern portion of the courtyard. Body Worn Camera footage showed Morales running at full speed directly toward the two officers and the reporting party's apartment, with an apparent firearm clearly visible in his right hand.

Officers immediately began yelling, "let me see your hands!", but Morales continued to run at them, with the apparent firearm in his right hand. As Morales continued to run at the officers while armed with an apparent firearm, both officers fired their service weapons, and both stopped firing immediately once Morales was down. A total of 9 rounds were fired. Morales suffered a bullet wound to his right forearm and two bullet wounds to his body. Officers rendered medical aid at the scene while waiting for paramedics to arrive. Morales survived, thanked officers for not killing him, and confirmed that he had recently used methamphetamine. Upon close inspection and manual manipulation, the weapon turned out to be a metal pellet gun, but looked identical to a Luger P08 pistol.

Legal Principles and Analysis

The legal standards that govern the use of deadly force by law enforcement require us to examine what the officers reasonably believed at the time of the shooting with regard to the threat of imminent death or great bodily injury, judged from the perspective of a reasonable officer in the same situation, based on what the officers knew or believed at the time of the shooting. In other words, it is the officer's reasonable belief at the time of the shooting—that there is a threat of imminent death or great bodily injury—that controls, rather than a hindsight view that incorporates facts not known to the officer at the time of the shooting. According to Penal Code 835a, a threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.

"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. For the use of deadly force to be "objectively reasonable," the officers must have probable cause to believe that the suspect posed a significant threat of death or serious physical injury to an officer or others.

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.”

The courts give great deference to the police when choosing what weapon to use when responding to a threat. “Monday morning quarterbacking is not allowed.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). “Detached reflection cannot be demanded in the presence of an uplifted knife.” *Brown v. United States*, 256 U.S. 335, 343 (1921) (Holmes, J.).

Questions often arise regarding the number of shots fired by police officers when responding to deadly threats. In *Plumhoff v. Rickard*, the United States Supreme Court considered whether officers went too far by firing fifteen rounds. *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012. In concluding the officers’ use of force was reasonable the Court stated, “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.

At the time that Sergeant Weidenkopf and Deputy Gonzalez fired their weapons, they reasonably believed based on information from dispatch that the suspect had an active no- bail warrant, that he was armed with a firearm, that he was likely high on methamphetamine, that he was waving a firearm around during the day in a residential apartment complex, that he had attempted to contact the reporting party, and that he may try to forcibly enter her apartment with a firearm, in violation of an active restraining order. In describing his own fear in the moments immediately before the shooting, Sergeant Weidenkopf, a law enforcement officer with 20 years of experience, described that time as the most fear he has ever been in during his entire law enforcement career. Deputy Gonzalez described seeing the suspect run towards him and being convinced at that moment that the suspect was going to kill him, Sergeant Weidenkopf, or the reporting party.

The speed with which the officers reacted was a function of how quickly the threat to officers escalated, from the time they first saw the suspect at the fence until he was running full-speed at them with an apparent firearm. The threat posed to law enforcement as an apparently armed individual ran full speed at uniformed officers without regard for the officers’ commands would have existed even without the additional information that they knew from dispatch. That additional information (that Morales was acting erratically and waving a gun around, apparently under the influence of methamphetamine, with an active no bail warrant, attempting to gain entry into an apartment, and that the reporting party was fearful that Morales might gain entry into the apartment) only enhances the reasonableness of the decision to use deadly force to prevent great bodily injury to themselves or others.

Although the contact lasted mere seconds, officers did not fire on the suspect until the suspect was already running directly toward them and the apartment of the reporting party, at a very fast speed, with an apparent firearm, in a populated residential area, where the suspect did not stop, raise his hands or drop the weapon in reaction to uniformed law enforcement presence and numerous commands to do so. The shooting ended as soon as officers lost sight of the suspect, and based on what the officers knew and saw at the time, the imminent threat of death or great bodily injury

posed by the suspect existed for the entirety of the shooting. Once he was down, officers performed lifesaving measures as soon as it was safe to do so. The realization after the shooting that the apparent firearm was actually a pellet gun designed to look like a pistol does not alter the reasonableness of the belief by law enforcement at the time of the shooting that the firearm was real. In fact, numerous courts have held that a pellet gun is a deadly weapon within the meaning of the penal code. *People v. Lochtefeld* (200)77 Cal. App. 4th 535. The fact that officers believed the pellet gun was actually a firearm, and that the pellet gun looked identical to an actual well-known firearm, weighs in favor of a finding that the officers' subjective belief (about the impending great bodily injury or death, to themselves or another) was objectively reasonable.

Officers had no information to indicate that the firearm was a replica at the time of the shooting. The firearm looked like a Luger P08 pistol even in closeup photos of the item, and certainly appears to be the shape and size of a firearm in Morales' hand as he ran toward law enforcement. Finally, the belief that Morales was armed with a firearm was entirely consistent with the statements of the reporting party, known to the officers before the shooting occurred. Given the threat that was presented, the environment, and the speed at which the suspect ran towards the officers, less-lethal options (such as pepper spray, taser, or baton) would not have been effective or feasible.

Under these facts, a reasonable officer in the same situation would believe that at the time of the shooting, Morales had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officers or the reporting party.

Conclusion

Based upon a review of the evidence submitted by Kern County Sheriff's Office, Deputy C. Gonzalez and Sergeant J. Weidenkopf 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.

Respectfully Submitted,



Cynthia Zimmer
Kern County District Attorney