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July 26, 2021

Chief of Police Greg Terry
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

Re: Officer-Involved Shooting of Everardo Gonzalez (Santana) by Officer Waddle and Detective Martin on August 17, 2020 at BSW Roofing, 4, P St, Bakersfield, CA 93304. Bakersfield Police report number 2020-150540

Dear Chief Terry,

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 findings of the Officer-Involved Shooting Committee are noted below.

Summary

On Monday August 17, 2020, between 11:00 and 11:23am, Everardo Gonzalez stabbed three victims, carjacked a car, was involved in two hit and run vehicle collisions, and fled on foot after the second vehicle collision to a supply yard at BSW Roofing located at 4, P Street in southeast Bakersfield. When he entered the supply yard at BSW Roofing he had a knife in each hand as employees were busy working.

Kern High School District Police Officer Embrey arrived as Mr. Gonzalez entered the supply yard at BSW Roofing. Officer Embrey ordered Mr. Gonzalez in English and Spanish to drop the knives multiple times, but Mr. Gonzalez ignored all commands. Officer Embrey's actions drew Mr. Gonzalez's attention towards himself enabling BSW employees to escape to safety, but Mr. Gonzalez appeared agitated and ignored multiple orders to drop the knives he was holding.

Within fifteen seconds of Officer Embrey confronting Mr. Gonzalez, Bakersfield Police Officer Waddle and Detective Martin arrived and ordered Mr. Gonzalez to drop the knives. Mr. Gonzalez ignored all commands and walked towards the officers until he sprinted directly towards Officer Waddle holding the knives above his head in an aggressive manner. Officer Waddle retreated into the street until he could not safely back up any further without moving into oncoming traffic on P Street.

Officer Waddle was aware Mr. Gonzalez had stabbed multiple victims and stolen a vehicle less than twenty minutes before this encounter. Officer Waddle had his back against oncoming traffic as Mr. Gonzalez sprinted towards him with knives out in attack position. In fear of being stabbed to death by Mr. Gonzalez Officer Waddle waited at great risk to his own personal safety until Mr. Gonzalez was within four feet of himself to fire two rounds, as a last resort to protect himself. Both rounds struck Mr. Gonzalez.

Detective Martin, aware of Mr. Gonzalez's prior stabbings, car theft, and hit and run collisions observed him fail to follow officers' orders to drop the knives and saw him with knives out sprinting towards Officer Waddle. Detective Martin fired one round at Mr. Gonzalez simultaneously with Officer Waddle to protect Officer Waddle from being stabbed by Mr. Gonzalez. Mr. Gonzalez was approximately four feet from Officer Waddle and closing the distance quickly when Detective Martin fired one round striking Mr. Gonzalez.

Mr. Gonzalez fell to the ground after being struck by three rounds but did not drop the knives for fifteen seconds as officers stood over him yelling at him to drop the knives. After dropping the knives Mr. Gonzalez was provided immediate medical attention.

Law enforcement fired three rounds on August 17, 2020, at 11:23am and contact between Mr. Gonzalez and Officers lasted approximately thirty seconds, prior to officers discharging firearms. Mr. Gonzalez died because of multiple gunshot wounds.

Legal Principles and Analysis

The facts in this case are determined by considering all available information, including but not limited to video surveillance from BSW Roofing, law enforcement body worn camera video, recorded statements by witnesses, pictures, 911 radio dispatch recordings and logs, investigative reports, and coroner reports.

The issue is whether the conduct of Officer Waddle and Detective Martin, were criminally culpable and without justification. To charge Officer Waddle or Detective Martin with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. Therefore, to lawfully charge Officer Waddle or Detective Martin with a crime, the prosecution must be able to prove that they did not act in lawful self-defense or defense of others. If Officer Waddle and Detective Martin's actions were justifiable and necessary as lawful self-defense or defense of others, then criminal charges will not be warranted.

Where potential dangerous, emergency conditions, or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect,

“the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.” (*Brown v. Ransweiler* (2009), 171 Cal.App.4th 516 at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

The California Supreme Court defined a ‘deadly weapon’ as ‘any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.’ *People v. Aguilar* 16 Cal.4th 1023 at 1028. In this case, Mr. Gonzalez had already used his knives to injure people and showed no indication he was using the knives for any purpose other than as weapons when he held them up and charged at officer Waddle.

Based on the totality of all available evidence the prosecution will not be able to prove beyond a reasonable doubt that Officer Waddle or Detective Martin were not justified in believing that Mr. Gonzalez posed a significant threat of death or serious physical injury to officers or civilians. This conclusion is based on a review of all the evidence particularly the conduct of Mr. Gonzalez who twenty minutes before being confronted by officers had already stabbed three victims, carjacked a vehicle, and entered a business yard armed with two knives where unarmed employees were working. Moments leading up to the shooting, when officers arrived, Mr. Gonzalez appeared agitated, had two knives drawn in an aggressive manner, and had aggressively began approaching officers. Mr. Gonzalez was given several commands to stop and drop the knives in English and Spanish but continued to advance. After the warnings were ignored Mr. Gonzalez raised the level of aggression by sprinting at officers aggressively with his knives out and ready to attack. Mr. Gonzalez was four feet away from Officer Waddle and rapidly closing the distance when Officer Waddle fired only two rounds out of fear of death or serious bodily injury to himself. Officer Waddle reasonably believed the only way to prevent death or serious bodily injury to himself was to fire his weapon. Therefore, Officer Waddle’s use of a firearm was justified as self-defense under California State law.

With knowledge of Mr. Gonzalez’s prior knife attacks of three different people and willingness to stab them for no apparent reason, his failure to yield to officer’s commands to stop, and observing his choice to aggressively confront law enforcement with deadly weapons Detective Martin reacted under a reasonable belief that there was an imminent threat of death or serious bodily injury to Officer Waddle. Due to Mr. Gonzalez’s actions of raising two knives and sprinting in an aggressive manner to within four feet of Officer Waddle, Detective Martin reasonably believed the only effective means of dealing with this threat to Officer Waddle was to fire his weapon. Therefore, Detective Martin’s use of a firearm was justified as defense of others under California State law.

Conclusion

Even in hindsight, there was little opportunity for officers to have reacted differently because Mr. Gonzalez charged at Officer Waddle quickly with knives drawn coming within four feet of Officer Waddle. Therefore, the actions of Officer Waddle were legally justified as self-defense under California State law and the actions of Detective Martin were legally justified as defense of

another under California State law. We find no violation of state law because both officers actions were reasonable, justified, and necessary under the circumstances when Mr. Gonzalez sprinted at Officer Waddle with two deadly weapons and was shot on August 17, 2020. This conclusion is based upon a review of the evidence submitted by the Bakersfield Police Department, the witness statements and evidence are corroborated by surveillance video and officer worn body camera video.

The Kern County District Attorney is closing its inquiry into this incident.

Sincerely,


Cynthia J. Zimmer
District Attorney