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

Re: Officer-Involved Shooting of Anthony James Gonzales by BPD Officer Matthew Aquino and BPD Officer Louis Rodriguez on July 9, 2019, at 3023 Nelson Street, Bakersfield, CA 93305. Bakersfield Police report number 2019-141792

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 Officer-Involved Shooting Committee has completed its review. The findings are noted below.

Summary

On July 9, 2019, at 1:50 a.m., Bakersfield Police Department Officers were dispatched to 3023 Nelson Street after the suspect Anthony James Gonzales kicked in the door of his estranged wife's home, while their divorce was still pending. The wife fled the house through a nearby window, leaving her 11-year-old and 13-year-old behind while she called 911. The 13-year-old also called 911. Before the suspect kicked in the door, the estranged wife heard the suspect yell something to the effect of, "You're going to give me the fucking house!" The 13-year-old heard the suspect loading a gun before police arrived. Police and witnesses heard a loud noise before police located the suspect, but could not be sure if it was fireworks or gunfire.

When the two officers approached on foot from different vehicles, they saw the suspect holding a shotgun at the low-ready position (about waist level, prepared to fire) in the driveway of the house, which slopes down toward the street from which officers approached. The suspect was given numerous commands to drop the weapon, but he continued to advance on officers while yelling, "You're going to have to do it. You're going to have to kill me," while approaching officers

in an aggressive manner, raising the weapon towards the officers. Due to the distance between each officer and the suspect, the presence of vehicles in the driveway, and because the suspect was approaching from higher ground, less-than-lethal options would have been ineffective. The distance was too great for a taser, baton, or pepper spray to be used reliably, and given that the suspect had a shotgun pointed in the direction of officers, it would have been unsafe for the officers to holster their weapons and transition to a less-than-lethal option. The suspect was originally about 70 feet from the officers, but closed the distance to about 40 feet by the time the shooting occurred.

When the armed suspect continued to advance on officers and refused to drop his weapon, while pointing the shotgun in the direction of officers, officers fired. Officer Rodriguez fired five rounds and Officer Aquino fired one round. The suspect was struck twice and died at the scene. Shotgun wadding, spent shell casings, and pellet damage in the area suggested that the noise heard before police contacted the suspect was in fact the sound of the shotgun being fired. The spent shell casing found near the suspect was compared to a test-fired shell casing of the shotgun by the Kern County Regional Crime Laboratory, and it was determined that the spent shell casing was consistent with having been fired from that shotgun. Laboratory results determined that the suspect's blood alcohol concentration was .15% when he died. The shotgun had one live round in the chamber and two additional live rounds in the magazine tube.

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.”

At the time that Officer Matthew Aquino and Officer Louis Rodriguez fired their weapons, they reasonably believed that the suspect was going to shoot them if they didn’t shoot him first. The suspect made it clear through his words and his conduct that he was not going to surrender, that someone was going to be shot (and possibly killed), and that the only way for officers to avoid being shot and possibly killed was if they shot first. Each step the suspect took toward the officers (with the shotgun in a position from which it could quickly be fired at the officers) made it more likely that one of the officers would be shot. At the point that the suspect began approaching the officers, the only way that officers could have avoided the imminent threat of death or serious bodily injury would have been to walk away from the call, creating an unreasonable risk of harm to the two children in the house, the estranged wife, and possibly others in the residential neighborhood. Through his words and conduct, the suspect left officers with no alternatives.

Conclusion

Based upon a review of the evidence submitted by Bakersfield Police Department, the Kern County Coroner, and the Kern County Regional Crime lab, Officer Matthew Aquino and Officer Louis Rodriguez 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 J. Zimmer
District Attorney