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December 9, 2021

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

Re: Officer-Involved Shooting of Cesar Ruiz by Deputy Mario Garza on August 20, 2020 at 1701 Highway 178 [Tony's Firehouse Grill] in Bakersfield CA.

Dear Sheriff Youngblood:

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed the 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 Committee has completed its review. The findings are noted below.

Summary

On August 20, 2020, several witnesses observed Cesar Ruiz driving erratically on Highway 187. Ruiz eventually drove into the parking lot of Tony's Firehouse Grill [1701 Highway 178]. Ruiz continued driving erratically through the front parking lot into the back parking lot, eventually stopping his vehicle near a propane tank in the back parking lot. Video surveillance captured Ruiz's erratic driving. Ruiz exited his vehicle and re-entered the front parking lot (on foot). Ruiz attempted to break into a vehicle in the front parking lot. Video surveillance captured Ruiz's attempted vehicle burglary. Ruiz appeared under the influence of a controlled substance.

Deputy Garza was off-duty and waiting for his food inside his vehicle in the front parking lot. Several witnesses, including Deputy Garza, saw Ruiz's erratic driving and attempted vehicle burglary. These witnesses, along with Deputy Garza, approached Ruiz. Ruiz pulled out a firearm from his waistband and brandished it at the witnesses. Deputy Garza heard multiple people yelling, "he's got a gun!" As Deputy Garza pulled out his firearm, Ruiz pointed his gun at Deputy Garza.

Deputy Garza fired one round at Ruiz just as Ruiz fired two rounds at Deputy Garza. Deputy Garza was not hit. Ruiz was hit in the chest and fell to the ground. Deputy Garza identified himself and gave Ruiz verbal commands for Ruiz to drop his weapon. Ruiz failed to comply. Ruiz again raised his gun at Deputy Garza. Deputy Garza was in fear for his life and fired two additional shots. Ruiz was hit

once in the head. Ruiz died as a result of his two gunshot wounds. Video surveillance captured the shooting.

Deputy Garza fired a total of three shots and Ruiz fired a total of two shots, as confirmed by spent shell casings and bullet strikes found at the scene. A search of Ruiz's vehicle revealed a bullet and several syringes. A search of Ruiz's pockets revealed spent shell casings, a bundle of methamphetamine and a bundle of heroin. Ruiz's toxicology results, as revealed by his autopsy, confirmed the presence of methamphetamine and morphine in Ruiz's blood at the time of his death.

Legal Principles and Analysis

In this case, Deputy Garza used deadly force in response to the threat Ruiz posed to Deputy Garza's life and the lives of other civilian witnesses.

A peace officer includes any deputy sheriff of a city or county, who is employed in that capacity (Penal Code section 830.1). That peace officer's authority extends to any place in the state where any public offense is committed in the peace officer's presence and with respect to which there is immediate danger to person or property or of the escape of the perpetrator of the offense (Penal Code section 830.1(3)). Deputy Garza is a deputy sheriff employed as such for the County of Kern. Thus, he is a peace officer within the meaning of Penal Code section 830.1. Even when off-duty, Deputy Garza is still considered a peace officer where any public offense is committed in his presence where there is immediate danger to person or property or the escape of the perpetrator. In this case, Ruiz committed multiple public offenses in Deputy Garza's presence: reckless driving, being under the influence of a controlled substance, attempted vehicle burglary and brandishing of a firearm. During Ruiz's commission of these offenses, he posed an immediate danger to multiple civilian witnesses and Deputy Garza himself.

Since Deputy Garza was acting as a peace officer, his conduct is judged by the same standard used for all peace officers (both on-and-off-duty). An officer with reasonable cause to believe a crime is committed or a person is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *see also* Penal Code section 835a(b). An officer may use deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (CA Penal Code section 835(c)(1)(A)).

When evaluating the use of deadly force, one must decide whether the officers' beliefs and action were objectively reasonable under all the circumstances known to him or her, as they appeared at the time. "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.

The law does not impose a duty to use less lethal options. "Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police

from protecting the public and themselves.” *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, 915). The appearance of danger is all that is necessary; actual danger is not. *People v. Toledo* (1948) 85 Cal.App.2d 369 (*overruled on other grounds*); *People v. Jackson* (1965) 233 Cal.App.2d 639. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, *supra*, 490 at p. 396.

Based on the totality of the circumstances, Deputy Garza’s use of deadly force was reasonable. Deputy Garza not only witnessed Ruiz’s erratic behavior, but also Ruiz’s commission of several criminal offenses – including brandishing a firearm at unarmed civilians. Deputy Garza responded to Ruiz being a danger to the public, at which time Ruiz displayed and ultimately used deadly force. Deputy Garza fired one round at Ruiz to stop the immediate threat Ruiz posed. Ruiz continued pose an immediate threat by raising his arm (while still holding a firearm) to fire additional rounds at Deputy Garza. Deputy Garza fired two additional rounds to stop the continued threat. Once Ruiz was no longer a threat, Deputy Garza stopped firing his weapon. The decision by Deputy Garza to shoot Ruiz to protect himself and the safety of the public was a reasonable one.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff’s Department and the Bakersfield Police Department, Deputy Mario Garza responded reasonably in self-defense and the defense of others to defend against an imminent threat of death or serious bodily injury posed by Ruiz. There is no state criminal liability for his use of deadly force under the circumstances of this case and the shooting is legally justified.

Sincerely,


Cynthia J. Zimmer
District Attorney