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

Re: Officer-Involved Shooting of Fernando Napoles by Deputy Christopher Saldana on September 3, 2020.

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 September 3, 2020, Deputy Saldana was on his way to begin his shift in Ridgecrest when he received a call regarding a subject walking down Hwy 14 near Redrock/Ransburg Road in Ridgecrest carrying a rifle. Deputy Saldana then responded to the location where he observed Fernando Napoles. Napoles matched the description of the person that had been reported to 911 moments before. When Deputy Saldana initially made contact with Napoles he was standing near two different vehicles (a maroon Dodge SUV and a silver Nissan SUV) and was not in possession of any weapons.

Upon initial contact Napoles made several statements to Deputy Saldana challenging him to fight. While making these statements Napoles was clenching his fists and positioned himself in a fighting stance. Napoles appeared to be under the influence. While Deputy Saldana was broadcasting that he was in contact with Napoles, Napoles ran back to the maroon Dodge SUV. He then entered the backseat of the vehicle and retrieved what Deputy Saldana believed to be a rifle with a brown stock. Napoles then began pointing the firearm at Deputy Saldana and making statements such as "shoot me, shoot me. I'm going to fucking kill you." At that moment Deputy Saldana was "terrified" and believed his life was in immediate danger so he unholstered his firearm and began shooting at Napoles.

When Deputy Saldana began shooting at Napoles, Napoles crouched into the backseat of the maroon Dodge SUV and was concealing himself behind a pillar in the car. During this time Deputy

Saldana could see Napoles continue to point the firearm at him and he appeared to be tracking Deputy Saldana's movements with the firearm. Deputy Saldana continued to fire until Napoles stopped moving.

Deputy Saldana fired approximately 30 rounds. When officers approached the vehicle Napoles was occupying, a shot gun was located directly next to Napoles' body. Napoles died as a result of two gunshot wounds that struck him in the head and lower back. Napoles toxicology results, as revealed by his autopsy, confirmed the presence of THC, amphetamine, and methamphetamine.

Legal Principles and Analysis

In this case, Deputy Saldana used deadly force in response to the threat Napoles posed to Deputy Saldana's life.

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 Saldana 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. In this case, Napoles pointed a shot gun directly at Deputy Saldana and threatened to kill him. During the incident deputy Saldana was by himself and his safety was put at substantial risk by Napoles' actions.

Since Deputy Saldana was acting as a peace officer and was on duty as a peace officer at the time of the incident, his conduct is judged by the same standard used for all peace officers. 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 actions 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 Saldana's use of deadly force was reasonable. Deputy Saldana not only observed Napoles in possession of a firearm, Napoles threatened to use the firearm to kill Deputy Saldana. Deputy Saldana fired his weapon at Napoles in response to Napoles pointing his firearm at Deputy Saldana and threatening to shoot him. Deputy Saldana stopped firing his weapon once Napoles stopped moving and was no longer posing a threat to Deputy Saldana. Once Napoles was no longer following Deputy Saldana's movements with his firearm Deputy Saldana stopped firing his weapon. The decision by Deputy Saldana to shoot Napoles was a reasonable one to protect himself.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department, Deputy Christopher Saldana responded reasonably in self-defense to defend against an imminent threat of death or serious bodily injury posed by Napoles. 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