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December 8, 2021

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

Re: Officer-Involved Shooting of Henry Rodriguez Jr. by Deputy Richard Santos on December 12, 2020, at 5901 Niles Street in Bakersfield, KCSO Report number 2020-00171479.

Dear Sheriff Youngblood,

The Kern County District Attorney's Officer-Involved Shooting Committee (hereinafter "OIS Committee") has review reports and other materials submitted by your agency regarding the shooting referenced above. The OIS Committee has completed its review. The findings from that review are contained herein.

Summary

On December 12, 2020, just prior to midnight, a fight began in the parking lot outside of the Stella's Sandtrap Bar at 3133 Niles Street in Bakersfield. Deputy Richard Santos had just pulled his marked Sheriff's cruiser into the adjacent parking lot when someone apparently involved in the fight fired a gun.¹ Deputy Santos drove from adjacent parking lot into the lot at Stella's Sandtrap, at which point Henry Rodriguez Jr. fled in a blue sedan. Deputy Santos gave chase in his cruiser. Mr. Rodriguez fled eastbound on Niles Street until he collided with the business sign at La Villa Taqueria at Niles Street and Normandy Drive. While Mr. Rodriguez left the firearm in the vehicle, there would have been no way for Deputy Santos perceive this, as Mr. Rodriguez fled on foot in baggy clothing. During the foot pursuit, Mr. Rodriguez again fled eastbound on Niles Street. Deputy Santos attempted to use his Taser, but it was ineffective, and Mr. Rodriguez continued to flee. During this time, Mr. Rodriguez ignored orders to stop and was yelling at Deputy Santos. Deputy Santos closed the distance with Mr. Rodriguez and reached him in the parking lot

¹ While Deputy Santos did not see who fired the gun, a witness later identified Henry Rodriguez Jr. as being the shooter, and the round fired was later identified by the Kern Regional Crime Laboratory as being from the firearm later found in the vehicle in which Henry Rodriguez Jr. fled from Stella's Sandtrap Bar. At the time of the writing of this letter, Henry Rodriguez Jr. is being prosecuted for attempted murder, among other offenses.

at 5901 Niles Street. Mr. Rodriguez briefly stumbled and fell to the ground, but immediately got back up and advanced on Deputy Santos. Deputy Santos began backing up, drew his weapon, and fired several shots, hitting Mr. Rodriguez. As Deputy Santos continued to back away, Mr. Rodriguez stood up and again began advancing toward Deputy Santos. Deputy Santos, with his firearm still drawn, retreated backwards down the west alleyway of 5901 Niles. Mr. Rodriguez continued to advance with his hands up in a threatening manner. When Mr. Rodriguez was within inches of grabbing Deputy Santos' firearm, Deputy Santos fired several more rounds, striking Mr. Rodriguez. Deputy Santos stopped firing when Mr. Rodriguez fell. Deputy Santos then kept his distance until backup arrived, at which point Mr. Rodriguez received medical attention. Mr. Rodriguez survived.

Legal Principles and Analysis

Penal Code section 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, as amended on January 1, 2020, states that officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." (Pen. Code § 835a(2).)

The California Court of Appeal for the Third District applied the recently amended Penal Code section 835a in *Koussaya v. City of Stockton* (2020) 54 Cal.App.5th 909. In that case, the court stated, "[w]e finally note that as long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the most reasonable action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect..." (*Id.*, at p. 936 [internal quotations omitted].) Accordingly, the touchstone of an officer's appropriate use of force is reasonableness in light of the totality of the circumstances. In a "sudden police chase," the measure of reasonableness is similar to that of an officer in a prison riot: "They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made in haste, under pressure, and frequently without the luxury of a second chance." (*County of Sacramento v. Lewis* (1998) 523 U.S. 833, 853 [internal quotation omitted].)

In the current case, Deputy Santos had been at Stella's Sandtrap Bar and heard someone fire a gun. Deputy Santos advised dispatch of the assault with a deadly weapon, evincing his actual subjective belief that a gun had been fired at someone. Discharge of a firearm is deadly force. (Penal Code 835a(e)(1).) Henry Rodriguez Jr. then fled the scene, signaling his possible culpability to Deputy Santos. This would fit the description of a "sudden police chase." (See *Sacramento v. Lewis*, *supra*.) Deputy Santos was therefore in a sudden police chase with a suspect armed with a firearm. In his flight, Mr. Rodriguez crashed his vehicle into a pole and left the firearm in the vehicle, but Deputy Santos did not have the opportunity to discover this fact, and the sudden police chase continued on foot. Mr. Rodriguez was wearing baggy clothes that could have concealed a firearm. During this period of flight, Deputy Santos escalated force from commands to use of his Taser. Neither a baton nor pepper spray would have been effective since the distance between Mr. Rodriguez and Deputy Santos at the time of Taser deployment was approximately 15 feet and Mr. Rodriguez was running away. A baton would have been ineffective at that range and pepper spray would have created a cloud that would more likely disable the deputy running into it rather than

Mr. Rodriguez. Taser deployment was ineffective, rendering the Taser ineffective for ranged use. This left only a firearm as an effective tool for ranged use. Moreover, Deputy Santos had reason to believe Mr. Rodriguez was armed with a firearm, and neither pepper spray nor a baton would have effectively prevented Mr. Rodriguez from using a firearm.

Deputy Santos closed the distance with Mr. Rodriguez at 5901 Niles Street, where Mr. Rodriguez stumbled, then suddenly turned and advanced toward Deputy Santos. At this point, Rodriguez had already evinced a willingness to use deadly force when he fired the gun at Stella's Sandtrap, had ignored commands to stop and had continued to flee even after Deputy Santos fired his Taser at Mr. Rodriguez, and when Deputy Santos finally closed the distance between them, Mr. Rodriguez turned and advanced on Deputy Santos as if to attack him. The deputy backed away, evincing a subjective fear for his own safety, drew his weapon, and fired. Deputy Santos stopped firing when Rodriguez fell and no longer presented an immediate threat. Deputy Santos then increased the distance between himself and Mr. Rodriguez, again evincing a subjective fear for his own safety.

Mr. Rodriguez then got back up and advanced toward Deputy Santos again, chasing the deputy down the west alleyway at 5901 Niles Street. Deputy Santos continued backing up as Mr. Rodriguez quickly advanced, hands raised in a threatening manner. Deputy Santos retreated a significant distance backwards, evincing his subjective belief that he was in danger, but Mr. Rodriguez was able to close the distance. Deputy Santos did not fire his weapon again until Mr. Rodriguez's hands were within inches of the deputy's firearm. As soon as Mr. Rodriguez fell again, Deputy Santos stopped firing his weapon, indicating that he only used force until the threat ceased to be imminent. From the time that Mr. Rodriguez turned and advanced on Deputy Santos until the last shot was fired, only 21 seconds had elapsed. Deputy Santos was alone through the entire pursuit. During this time, the effort to holster the firearm and draw a less-than-lethal option, such as pepper spray or a baton, would have placed Deputy Santos in greater danger.

Deputy Santos signaled backup with his flashlight, at which point additional deputies arrived. Deputies then called for medical aid. Mr. Rodriguez survived and gave an audio-recorded, Mirandized interview, in which he said he remembered being drunk and he remembered running from the police but did not remember shooting anyone and he did not remember anything after crashing his vehicle.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's office, Deputy Santos responded reasonably in self-defense to defend against an imminent threat of death or serious bodily injury. There is no state criminal liability for Deputy Santos' use of force under the circumstances of this case because the shooting is legally justified.

Sincerely,


Cynthia J. Zimmer
District Attorney