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January 25, 2022

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

Re: Officer-Involved Shooting of Willie Roberts by Deputy Brandon Geherty on December 15, 2020, at 2407 east California in Bakersfield, KCSO Report number 2020-00172739.

Dear Sheriff Youngblood,

The Kern County District Attorney's Officer-Involved Shooting Committee (hereinafter "OIS Committee") has reviewed 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

Undercover Sheriff's deputies went to 2407 East California Avenue on December 15, 2020, to serve a search warrant on a suspected illegal casino. The business was surrounded by a tall metal gate that was over 6 feet tall. The undercover deputies responded to the rear of the suspected casino and attempted entry by posing as patrons of the casino. It would have been difficult to breach the gate by force. They were told to return in a half hour. When they saw additional people leave the casino, they attempted entry in the same manner as before. They were again turned away. When deputies saw the gate open and two men exit the casino grounds, they took the opportunity to make their entry. Wearing vests with Sheriff's patches, they moved in to execute the warrant. Deputy Geherty exited the rear driver's side seat of the undercover vehicle with his suppressed, department-issued rifle and began moving toward the gate. One of the men who was leaving the business through the gate, Willie Roberts, removed an air pistol from his waistband and raised it toward Deputy Geherty. Deputy Geherty fired his weapon one time at Mr. Roberts, striking him in the thigh and causing what later appeared to be three wounds: an entry wound and an exit wound in one thigh, and an entry wound in the other thigh. Mr. Roberts dropped the air pistol, and

deputies rendered medical aid to Mr. Roberts, who survived.

Legal Principles and Analysis

The authority to detain individuals at a location where a search warrant is to be executed is well established. In *Michigan v. Summers* (1981) 452 U.S. 692 (*Summers*), the United States Supreme Court held that officers executing a search warrant may detain the occupants of a premises while searching it for contraband under a warrant; *Bailey v. U.S.* (2013) 568 U.S. 186 confirmed that the *Summers* rule applies to the immediate vicinity of the premises to be searched. *Bailey* involved a person who had left the premises where a search warrant was to be executed and was nearly a mile away at the time he was detained. The Supreme Court held that the defendant in that situation was not in the immediate vicinity of the premises to be searched. In so holding, the Court explained that the rule allowing the detention of occupants of a premises to be searched forwarded the related goals of minimizing the risk of harm to both officers and occupants, helping facilitate the orderly search of the premises, and preventing flight in the event that incriminating evidence is found. (*Id.* at pp. 194-98.)

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 case under consideration, deputies were present to execute a search warrant, and therefore were legally permitted to detain occupants in the immediate vicinity of the premises. The premises consisted of the address of the suspected illegal casino at 2407 East California Avenue, which was surrounded by a large gate. When deputies saw the gate open, Mr. Roberts emerged, and deputies moved in to execute the search warrant. Mr. Roberts was mere feet from the entry to the property, which would constitute the immediate vicinity as discussed in *Bailey*. Even going past the language of “immediate vicinity,” detaining Mr. Roberts was consistent with the three interests outlined in *Bailey*. Accordingly, prior to Mr. Roberts retrieving the firearm from his waistband, Deputy Geherty was justified in detaining Mr. Roberts for the execution of the warrant.

As Deputy Geherty was moving to lawfully detain Mr. Roberts pursuant to the *Summers* rule, Mr. Roberts retrieved the imitation firearm from his waistband. Deputy Geherty, faced with this circumstance, had only moments to act "decisively" and "under pressure." Based on what Deputy Geherty perceived, reasonable officer in the same position would have recognized the imitation firearm as an immediate and deadly threat. Faced with an apparent and imminent deadly threat, it would not have been reasonably safe or feasible to switch from Deputy Geherty's rifle to a less lethal option. Despite the use of deadly force, Deputy Geherty fired one round when his rifle had at least 28 rounds in the magazine.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's office, Deputy Geherty responded reasonably in the totality of the circumstances and acted in self-defense. Moreover, other forms of force would not have been reasonable in the circumstances. There is no state criminal liability for Deputy Geherty's use of force under the circumstances of this case because the shooting is legally justified.

Sincerely,


Cynthia J. Zimmer
District Attorney