



OFFICE OF THE DISTRICT ATTORNEY
C O U N T Y O F K E R N

CIVIC CENTER JUSTICE BUILDING
1215 TRUXTUN AVENUE
BAKERSFIELD, CALIFORNIA 93301
(661) 868-2340, FAX: (661) 868-2700

ANDREA S. KOHLER
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

June 28, 2022

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

Re: KCSO Officer-Involved Shooting of Ricardo Usher on September 15, 2020
Deputy Ubaldo Weiss
Moneta Avenue, Bakersfield, CA. Case documented in 2020-0129030

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 15, 2020, Deputy Weiss was on patrol in the area of Moneta Avenue. While in the area he heard a call come in regarding a suspicious vehicle and subsequently dispatched himself to the call. When he arrived at the location, he observed a white Chevy pickup truck with the engine running. As Deputy Weiss approached the vehicle, he noticed that the vehicle was occupied by two subjects, which caused Deputy Weiss to back away from the vehicle and call for backup.

While Deputy Weiss was at his vehicle awaiting additional deputies, he heard a male, later determined to be Ricardo Usher, screaming from behind him. When Deputy Weiss turned around, Ricardo Usher was approximately 30 to 50 feet away and was running at Deputy Weiss. Deputy Weiss yelled "Sheriff's Office! Stop!" multiple times but these commands were not heeded, and Usher continued to run at Deputy Weiss. As Usher came closer, Deputy Weiss observed something black in Usher's hand but was unable to determine exactly what it was due to the lighting conditions. As Usher got closer to Deputy Weiss he began to lower his shoulders toward Deputy Weiss. This caused Deputy Weiss to fear that Usher was going to assault or kill him. When Usher was close enough to Deputy Weiss, Deputy Weiss kicked Usher in an attempt to back him away, however the kick was ineffective, and Usher continued to advance toward Deputy Weiss. Still unsure of what the item in Usher's hand was, combined with Usher's behaviors, Deputy Weiss was in fear for his safety and his life. As a result, he fired his duty weapon at

Usher approximately three times until Usher stopped moving. The item in Usher's hand was ultimately determined to be a cellular telephone.

Deputy Weiss' body-worn camera captured most of the incident, and a review of the video shows Usher running at Deputy Weiss at a fast pace. Usher continued to advance on Deputy Weiss and Deputy Weiss removed his department issued firearm and pointed it at Usher. At the point that Deputy Weiss removed his firearm Usher was in a full sprint toward Deputy Weiss. Usher came within fifteen feet of Deputy Weiss whereupon Usher crossed his arms, lowered his head, and continued to advance upon Deputy Weiss. At this point in the video something shiny was seen in Usher's hand. As Usher made contact with Deputy Weiss, Deputy Weiss kicked him away, but Usher continued to advance at Deputy Weiss. At this point Deputy Weiss began to fire his weapon. Usher sustained substantial injuries from the gunshot wounds, however, the injuries were not fatal.

Though unknown to Deputy Weiss in the moment, additional statements were made by Usher after the incident provide that provide context to the unprovoked attack. The reporting included documentation of comments made by Usher after the incident in which Usher stated that he was suicidal and was hoping to be shot, which is what motivated the unprovoked assault on Deputy Weiss. This motivation, combined with underlying mental health issues and evidence of illicit drug use, all likely contributed to the assault upon Deputy Weiss. Combined with the other evidence in the case, this information helps provide context for this otherwise unprovoked assault upon Deputy Weiss.

On January 8, 2021, Usher pled "no contest" to charges of Penal Codes 69 [resisting arrest with force or violence], 148 [obstructing/resisting a peace officer] and 241(c) [assault upon a peace officer] stemming from this incident with Deputy Weiss.

Legal Principles and Analysis

In this case, Deputy Weiss used deadly force in response to the threat Usher posed to Deputy Weiss' 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 Weiss 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, Usher ran towards Deputy Weiss, late at night, with something in his hands. Even after sustaining a kick by Deputy Weiss Usher continued to advance at Deputy Weiss and pose a threat. It is important to note that at the time of Usher's actions, Deputy Weiss was by himself. Additionally, Deputy Weiss was unsure as to whether Usher was related to the occupied vehicle that was positioned behind Deputy Weiss at the time.

Since Deputy Weiss 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.

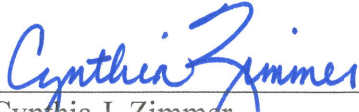
The law does not impose a duty to use less lethal options. "Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common 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 Weiss' use of deadly force was reasonable. Deputy Weiss was responding to a call of a suspicious vehicle. While attempting to address that situation he turned around to find Usher running full speed at him with something shiny in his hands. In this case, Deputy Weiss did attempt to use less lethal means when he initially kicked Usher to get him off of him. It wasn't until Usher resisted the kick and continued to advance at Deputy Weiss that he discharged his firearm. Deputy Weiss stated that these actions placed him in fear for his safety and his life. As soon as Usher stopped moving and no longer posed a threat, Deputy Weiss stopped firing. Under the totality of the circumstances and all the information that Deputy Weiss had at the time, the decision to shoot Usher was a reasonable one to protect himself.

Conclusion

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