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

Chief Kevin Zimmermann
Shafter Police Department
201 Central Valley Highway
Shafter, CA 93263

**Re: Shafter Police Dept. Officer-Involved Shooting of Jesus Ponce on September 2, 2021
Sergeant Lionel Lopez and Officer Maria Puente,
Minter Ave, Shafter CA.
Kern County Sheriff Case 2021-00114510.**

Dear Sheriff Youngblood and Chief Zimmermann,

The Kern County District Attorney's Office Officer-Involved Shooting (OIS) Review Committee has reviewed reports, video surveillance, photos, and other materials submitted by your agency regarding the shooting noted above. The OIS Review Committee reviews cases for criminal liability under state law. The OIS Review Committee has completed its review. The findings are noted below.

Summary

On September 2, 2021, Shafter Police responded to a vehicle versus building traffic collision on Minter Ave in Shafter, CA. Officers were told a subject was possibly pinned in the vehicle. Believing medical aid was likely necessary officers responded code 3 (lights and sirens). Sergeant Lionel Lopez and Officer Maria Puente arrived on scene along with other officers and approached a silver Dodge Charger which had crashed into the residence on the 600 block of Minter Ave. Officers identified themselves as Shafter Police as they approached the vehicle. Inside the Charger was a sole occupant Jesus Ponce, reclined in the driver seat and unresponsive. The windows of the vehicle were up, and doors locked.

Sergeant Lopez utilized a window punch to break the driver side window of Ponce's vehicle. Officer Puente was standing nearby Sergeant Lopez and observing. Almost immediately after

breaking the window, Ponce reached through the window at Sergeant Lopez with an eight-to-ten-inch kitchen knife. Sergeant Lopez immediately backed away from the door and Ponce immediately exited the vehicle. Sergeant Lopez and Officer Puente drew their sidearms. Sergeant Lopez issued commands to drop the knife, but Ponce did not comply. The terrain was poor, retreating was difficult, and Ponce was within five feet of Sergeant Lopez. Ponce then lunged at Sergeant Lopez, who responded by firing two rounds from his sidearm. Officer Puente was standing by observing the entire confrontation. When Ponce lunged at Sergeant Lopez, Officer Puente also fired two rounds from her firearm. Ponce was struck several times and survived.

Legal Principles and Analysis

An officer who has a reasonable cause to believe a person has committed a public offense or 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.

In deciding whether an officer who fired his or her weapon did so lawfully, one must consider what a reasonable person would have done in a similar situation with similar knowledge and experience. 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. For the use of deadly force to be "objectively reasonable," the officers must have probable cause to believe that the suspect posed a significant threat of death or serious physical injury to an officer or others.

The law does not impose a duty to use less lethal options. "Where the peril is swift and imminent and the necessity for action is immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." (*People v. Collins* (1961) 189 Cal.App.2d 575, 589.) The rationale for allowing police officers such discretion while under pressure is explained in *Scott v. Henrich* (1994) 39 F.3d 912, 915: "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. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment."

Additionally, an officer threatened with an attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of his right of self-defense a person may stand his ground and defend himself using force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge.

Penal Code section 835a was amended by the CA legislature in 2019. Beginning January 1, 2020, the standard for deadly force by a peace officer is defined as:

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect arrest, to prevent escape or to overcome resistance.

(c)(1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(CA Penal Code section 835a.)

Sergeant Lopez and Officer Puente's use of lethal force was justified under the circumstances. Sergeant Lopez responded to an accident and observed a subject inside a vehicle which had been involved in a serious accident. The subject was unresponsive, and the vehicle doors were locked. Believing the person may need medical aid, Sergeant Lopez used a punch to break the driver side window to gain access to the subject. Sergeant Lopez was in full, identifiable police uniform and at least one officer had identified the officers as Shafter Police.

Once Sergeant Lopez broke the window, Ponce reached through the broken window at Sergeant Lopez with an eight-to-ten-inch knife, committing an assault with a deadly weapon on a peace officer. More than simply startled by the responding officers, Ponce continued his assault upon the uniformed officers by immediately exiting the vehicle and lunging toward Sergeant Lopez, who was retreating. The terrain was poor making Sergeant Lopez vulnerable to tripping and falling while retreating. It was nighttime, the proximity of Ponce to Sergeant Lopez was close (within feet), and Ponce was armed with a deadly weapon (kitchen knife). Sergeant Lopez and other officers gave verbal commands to drop the knife, were wearing marked police uniforms, but Ponce remained undeterred. With no other options and in defense of his own life and that of the lives of the other officers present, Sergeant Lopez fired two rounds from his sidearm at Ponce.

Officer Puente was standing near Sergeant Lopez. She observed Sergeant Lopez break the window, Ponce reach through with knife, exit the vehicle and lunge at Sergeant Lopez with the knife. Believing that Ponce was going to stab Sergeant Lopez and having already given commands to drop the knife, Officer Puente fired two rounds from her sidearm.

Deadly force was an objectively reasonable response to the threat posed by Ponce. Penal Code section 835a and applicable case law makes clear an officer may use deadly force to defend against death or serious bodily injury.

"All determinations of unreasonable force, however, 'must embody allowance for the fact that police 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.” *Hayes* at 1232, *citing Graham* at 396-397.

Sergeant Lopez was confronted with an immediate threat of death or great bodily injury. He had mere seconds to decide to either shoot Ponce or engage him with less lethal options (such as a hand-to-hand struggle) which would have posed a serious and immediate risk of death or great bodily injury to himself. Officer Puente was standing by and had to make a similar split-second decision to either shoot Ponce or allow him to stab and possibly kill Sergeant Lopez. Under the circumstances there was no other reasonable option for either Sergeant Lopez or Officer Puente other than to shoot Ponce. Considering the threat presented, there was no practical less lethal option available to neutralize the threat. Thus, the use of lethal force must be considered objectively reasonable.

The response to a deadly threat cannot be excessive whether acting in self-defense or in the line of duty as a peace officer authorized to use deadly force. *Plumhoff v. Rickard* (2014) 572 U.S. 765 addresses the question of whether the degree of deadly force used is excessive. The specific question (in *Plumhoff*) is if the officers were constitutionally permitted to open fire, then did they go too far by firing fifteen rounds? In concluding the officers’ use of force was reasonable the Court stated, “It stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” *Id.* at 2022. The decisions by Sergeant Lopez and Officer Puente to shoot to protect their personal safety and the safety of those around them was an objectively reasonable one. It was therefore reasonable for them to fire and not stop firing until the threat was ended.

Conclusion

Based upon a review of the evidence submitted by the Shafter Police Department and Kern County Sherriff’s Office, Sergeant Lopez and Officer Puente each responded reasonably in self-defense and the defense of others to defend against an imminent threat of death or serious bodily injury posed by Mr. Ponce. There is no state criminal liability for the use of deadly force under the circumstances of this case and the shooting is legally justified.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Zimmer". The signature is written in dark ink and is positioned above a horizontal line.

Cynthia Zimmer
Kern County District Attorney