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August 5, 2022

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

Re: KCSO Officer-Involved Shooting of Deven Moore on February 9, 2022
Deputy Austin Burgess
Pierce Road, Bakersfield CA. Case documented in 2022-00015876.

Dear Sheriff Youngblood,

The Kern County District Attorney's Office, Officer Involved Shooting (OIS) Review Committee has reviewed reports, body worn camera Footage, audio recordings, 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 and the findings are noted below.

Summary

In the afternoon of Wednesday, February 9, 2022, Kern County Sheriff's Office received a 911 report of Deven Moore vandalizing cars and threatening people with a sledgehammer. KCSO patrol deputies arrived within a few minutes and located Moore walking nearby on Pierce Road carrying a knife and a fire extinguisher. Three deputies responded and all were in full uniform and marked patrol vehicles.

Deputy Burgess started driving behind Moore in his patrol vehicle and used his vehicle loudspeaker to call Moore by name and asked him to stop so they could talk to him. Deputy Burgess saw the knife in Moore's hand and called dispatch to inform them and other deputies about the weapon.

Rather than comply with the deputy, Moore ran and tried to hide in a small shack in the parking lot of a nearby trucking company. Inside the shack Moore confronted a 70-year-old, non-English speaking male who was working in there. Moore grabbed the man, wrapped himself around the hostage, and used him as a shield against the deputies. When deputies approached the shack, they saw the hostage sitting in a chair and the suspect standing behind him with his left arm around the elderly man's neck. Moore was holding a large knife in his right hand and appeared to be trying to actively stab the hostage in the torso and neck area while the hostage was struggling with Moore to keep the knife away. When Moore saw

the deputies through the doorway he started yelling “get back” and “get away.”

Deputies tried negotiating with Moore to de-escalate the situation, stating that they would back away if Moore would put down the knife. These communications with Moore lasted about 10 seconds before Moore threatened to stab the hostage. Deputy Burgess believed Moore presented an imminent threat of death or serious bodily injury to the hostage, and if he didn’t immediately stop Moore, he would kill the hostage.

Deputy Burgess considered the less lethal options and determined that the less lethal options would be ineffective, and would risk causing Moore to become more agitated, thus increasing the risk of harm to the hostage or the deputies. The distance was too great, and window for effective use too small for a tazer to be effective, and neither a baton nor OC spray would be effective in the confined quarters of the shack.

Within seconds after Moore threatened to stab the hostage, Deputy Burgess fired a single shot at Moore. Deputy Burgess wasn’t sure if Moore was hit, and it appeared the hostage was still struggling with Moore over the knife, so Deputy Burgess fired a second shot. At that point the deputies were able to remove the hostage from the shack. The rounds fired by Deputy Burgess struck Moore, who ultimately died as a result of the injury. The hostage that Moore had taken at knife-point was not injured.

Legal Principles and Analysis

Moore’s actions demonstrated a clear threat to the life of the civilian hostage and that was apparent to Deputy Burgess. At the time Deputy Burgess fired his weapon, Moore had threatened to stab the hostage if the deputies didn’t “back away”, and Moore and his hostage were actively struggling over control of the knife. A knife used in this manner is a deadly weapon capable of inflicting great bodily injury or death.

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 the arrest, to prevent escape, or to overcome resistance. (PC § 835a(b)). California Penal Code (PC) §§ 196 and 835a outline the circumstances under which a peace officer is authorized to use force, including deadly force.

Peace deputies may use deadly force when necessary in defense of human life. (PC 835a(a)(2)). When determining whether deadly force is necessary, deputies must evaluate each situation in light of the particular circumstance of each case and shall use other available resources and techniques if reasonably safe and reasonable to an objectively reasonable officer (PC § 835a(a)(2)). The California Legislature has mandated that deputies shall use de-escalation tactics if objectively reasonable based on the particular circumstances of the case. (PC § 835a(a)(2)).

California law permits the use of deadly force by any person in defense of others, if (1) the individual reasonably believed that [the third party] was in imminent danger of being killed or suffering great bodily injury; (2) the individual reasonably believed that the immediate use of deadly force was necessary to defend [the third party] against that danger; and (3) the individual used no more force that was reasonable necessary to defend against that danger. (California Jury Instruction Criminal #505)

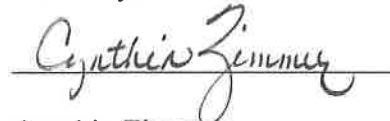
Deputies were aware that Moore had assaulted other people with a sledgehammer, which itself is a dangerous and deadly weapon. When they located Moore, he was in possession of a knife and he ran from the deputies when contacted. Just prior to the shooting, Moore was well aware that he was sought

by the deputies, had taken an elderly man hostage, and was engaged in assaulting that hostage with a deadly weapon. Deputies tried to negotiate with Moore to de-escalate the situation, however that was ineffective and Moore threatened to stab the hostage, which caused Deputy Burgess to exercise the right of self-defense of others, and Moore was shot twice. Deputy Burgess wasn't under any obligation to retreat, nor was he under any obligation to wait for the hostage be stabbed to take defensive action. Under the circumstances, it would not be reasonable to delay intervention because of the active struggle between the hostage and Moore over control of the knife. Moore's actions presented a clear, immediate threat to the life of the hostage, and the employment of deadly force to address the threat and defend the life of the hostage was both a subjective and objectively reasonable use of deadly force employed to address the imminent threat posed by Moore's actions.

Conclusion

Based on a review of the evidence submitted by Kern County Sheriff's Department, Deputy Austin Burgess responded reasonably to a lethal threat in defense of others. There is no state criminal liability for his use of deadly force under the circumstances of this case because the shooting is legally justified.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia Zimmer", written over a horizontal line.

Cynthia Zimmer
Kern County District Attorney