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August 5, 2022

Chief of Police Greg Terry
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

Re: BPD Officer-Involved Shooting of Jose Ramirez on October 13, 2020
Officer Nghia Duong, Senior Officer John Weyer and Detective Randy Petris
East 18th Street and Baker Street, Bakersfield, CA
Bakersfield Police Department report number 2020-189198

Dear Chief Terry,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed 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 findings of the Officer-Involved Shooting Committee are noted below.

Summary

On Tuesday, October 13, 2020, at approximately 0930 hours, Bakersfield Police Officers were dispatched to 520 Sonora Street for a report of a stabbing. Additional information provided indicated that a mother had been stabbed by her son and was bleeding heavily. Upon arrival, Officer Salinas observed a female lying in the roadway along the west curb line to the front of 520 Sonora Street. There were two subjects tending to the injured female who informed police that the woman had been stabbed in the back by her son, later identified as Jose Ramirez. Ramirez had fled on foot eastbound on East Truxtun Avenue and was still in possession of the knife. At the scene officers observed the victim to have a puncture wound to the left side of her abdomen and two additional puncture wounds on the lower right side of her back. The victim told officers that her son had stabbed her "for no apparent reason" and that he was schizophrenic. Officers also spoke to the victim's daughter (sister of Jose Ramirez) who said she had observed the stabbing by her brother and that he had been off his medications for the past six months. She said Jose Ramirez "becomes angry and aggressive when he does not take his medications properly."

Ramirez was subsequently contacted by officers in the street on East 18th Street near the intersection with Baker Street, where the officer involved shooting ultimately occurred. After several minutes of multiple officers yelling for Ramirez to drop the knife, which he continued to brandish, Ramirez charged officers and was shot within a few feet of Detective Petris. Ramirez's final charge toward officers came only after Ramirez had yelled for the officers to shoot him. Ramirez's final movement to charge at officers also came only after attempts at less-lethal options were employed, including the use of verbal commands by multiple officers and the deployment of a less-lethal 40mm launcher to attempt to gain compliance.

Detective Petris, Officer Duong, and Senior Officer Weyer used deadly force in response to Ramirez' final charge towards officers, which ultimately resulted in the death of Jose Ramirez.

Legal Principles and Analysis

The facts in this case are determined by considering all available information, including but not limited to law enforcement body worn camera video, recorded statements by witnesses, photographs, 911 radio dispatch recordings and logs, investigative reports, and coroner reports.

The issue is whether the conduct of Officer Duong, Senior Officer Weyer and Detective Petris in deploying deadly force was criminally culpable and without justification. To charge Officer Duong, Senior Officer Weyer and Detective Petris with a criminal violation, the prosecution must be able to prove beyond a reasonable doubt that no legal justification existed for the officers' use of force. Therefore, to lawfully charge Officer Duong, Senior Officer Weyer or Detective Petris with a crime, the prosecution would have to prove that the officers did not act in lawful self-defense or defense of others. If these officers' actions were justifiable and necessary as lawful self-defense or defense of others, then criminal charges will not be warranted.

Where potentially dangerous, emergency conditions, or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness in terms of the use of deadly force is deferential to the circumstances faced in the moment by officers responding to such situations. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler* (2009), 171 Cal.App.4th 516 at p. 528.)

California Penal Code section 835a, permits officers to use "objectively reasonable force to effect an arrest, prevent escape, or to overcome resistance." The statute limits the use of deadly force to certain situations, including those "in which 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 to another person..." An "imminent threat" is further defined by the statute as one in which a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person."

The California Supreme Court defined a 'deadly weapon' as 'any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.' *People v. Aguilar* 16 Cal.4th 1023 at 1028. In this case, Mr. Ramirez had already stabbed his own mother, seriously injuring her, and the knife that he brandished and charged officers with is undoubtedly a

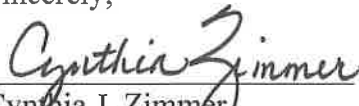
deadly weapon, considering both the manner that he had already used it and in which he was employing it against officers. Ramirez was contacted by numerous police officers in uniform in marked patrol vehicles who demanded him to drop the knife. He continued to refuse officer demands and paced in the street yelling at officers to shoot him. Ramirez was directly hit with multiple 40mm less than lethal rounds, which had no significant deterrent effect at gaining compliance. Ultimately, Ramirez charged Detective Petris while still holding the knife. When Ramirez began his last approach within 15 feet of Detective Petris he was shot by Officer Duong, Senior Officer Weyer and Detective Petris when he came within 5 to 10 feet of Detective Petris. Ramirez went down immediately, and officers began to render medical aid.

Based on the totality of all available evidence, the prosecution cannot prove beyond a reasonable doubt that Officer Duong, Senior Officer Weyer and Detective Petris were not justified in believing that Mr. Ramirez posed a significant threat of death or serious physical injury to officers or civilians. To the contrary, the evidence supports a finding these officers were justified in the use of lethal force under California law. This conclusion is based on a review of all the evidence, particularly the conduct of Mr. Ramirez, who before being confronted by officers had already stabbed his mother repeatedly. Moments leading up to the shooting, when officers arrived, Mr. Ramirez appeared agitated, had a knife drawn in an confrontational manner, and aggressively began approaching officers. Mr. Ramirez was given several commands to stop and drop the knife but continued to advance. After the warnings were ignored, Mr. Ramirez raised the level of aggression by lunging at officers with the knife. Mr. Ramirez was only a few feet away from Detective Petris and was actively closing the distance when he was finally shot by the officers, who actually and reasonably feared that, if permitted to continue, Mr. Ramirez would use the knife against officers present at the scene. Detective Petris reasonably believed the only way to prevent death or serious bodily injury to himself was to fire his weapon. Officer Duong and Senior Officer Weyer, who were standing on either side of Detective Petris reasonably believed Petris was about to be killed or seriously injured if they did not employ lethal force. Therefore, these officers' use of a firearm was a justified response to the imminent threat posed by Mr. Ramirez, as well as justified under self-defense and defense of others under California State law.

Conclusion

Even with the benefit of hindsight, there was little opportunity for officers to react differently. Mr. Ramirez was committed to doing whatever was necessary to cause the officer-involved shooting to occur, as evidenced by his multiple demands that the officers present shoot him. With this resolve, and a clearly demonstrated willingness and ability to use the knife against others, including his own mother, Mr. Ramirez charged at Detective Petris and came within a few feet of him while wielding the knife before deadly force was finally employed by the officers. The actions of Detective Petris were legally justified as self-defense under California State law and the actions of Senior Officer Weyer and Officer Duong were legally justified as defense of another under California State law. There is no violation of state law because these officers' actions were reasonable, justified, and necessary under the circumstances.

Sincerely,


Cynthia J. Zimmer
Kern County District Attorney