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August 24, 2022

Chief Greg Terry
Bakersfield Police Department
1601 Truxtun Ave
Bakersfield, CA. 93301

**Re: BPD Officer-Involved Shooting of Dalton Kooiman on April 27, 2021
Officer Brockett Mueller
Officer Johnny Moreno
2020 Feliz Drive, Bakersfield, CA. Case documented in 2021-79964.**

Dear Chief Terry,

The Kern County District Attorney's Office, Officer Involved Shooting (OIS) Review Committee has reviewed reports, body worn camera Footage, audio recordings, photographs, 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

On April 27, 2021, Bakersfield Police Officer Jose Medrano was on patrol at the Starlighter Motel on Union Avenue and noticed a truck that had been reported stolen. The driver, later identified as Dalton Kooiman, was the sole occupant. Officer Medrano activated his lights and siren and attempted to stop the truck, which fled and subsequently crashed into the wall of a residence. The Kern County Sheriff's Office helicopter located Kooiman at 2020 Feliz Drive, and Bakersfield Police officers responded, ordering him to get on the ground. Kooiman ignored commands from officers and fled while pursued by several officers.

Officer Brockett Mueller observed Kooiman running from officers and ordered him to stop, identifying himself as a K9 officer and warning Kooiman that he was "going to get bit." Officer Mueller released his K9 partner, Jango, who ran towards Kooiman. Officer Mueller heard a gunshot and saw Kooiman with a silver revolver. He then saw Kooiman fire again, at Jango, and once more, but did not observe Jango in the area. Believing that Kooiman was firing at him, Officer Mueller drew his firearm and fired at Kooiman from a distance of 15 to 20 yards. Officer Johnny Moreno, who was engaged in the pursuit, fired an additional two rounds at Kooiman, having observed him firing at Jango and in the direction of

other officers. Kooiman fell to the ground, still with the silver revolver in his hand. He was pronounced dead at the scene.

An autopsy confirmed that Kooiman's cause of death was multiple gunshot wounds. K9 Officer Jango was taken to a veterinarian and also pronounced dead, having sustained multiple gunshot wounds.

Legal Principles and Analysis

Kooiman's actions demonstrated a clear threat to the lives of Bakersfield Police Officers attempting to effect his lawful arrest. At the time Officers Mueller and Moreno fired their weapons, Kooiman had taken a position of cover and fired a gun in the direction of Officer Mueller, fatally wounding Jango in the process. Officer Mueller was exposed and unable to retreat to a position of safety without turning his back on Kooiman, which would have exposed him to further danger.

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 officers 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)

In this case, Officers Mueller and Moreno fired their respective weapons at Kooiman only after Kooiman opened fire first. Kooiman was in the back yard of a private residence in a residential neighborhood during the nighttime hours, where visibility was limited and civilians were potentially in danger of being shot. Kooiman had evaded officers on a pursuit, ignored numerous verbal commands by officers, had taken a position of cover behind a telephone pole, and fired a gun multiple times in the direction of officers. Officer Mueller's K9 partner Jango had been hit at least one time, ultimately dying from the injuries he sustained as a result. Kooiman's actions placed Officers, most notably Officer Mueller, in imminent danger of being killed or suffering great bodily injury.

The use of deadly force was necessary to overcome Kooiman's resistance to the execution of his lawful arrest, given that he failed to yield and did not stop after repeated verbal commands to do so, then fired in the direction of officers as they attempted to subdue him through the use of a K9.

Conclusion

Based on a review of the evidence submitted by the Bakersfield Police Department, Officers Brockett Mueller and Johnny Moreno responded reasonably to a lethal threat in defense of themselves and 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", is written over a horizontal line.

Cynthia Zimmer
Kern County District Attorney