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October 28, 2022

Arvin City Manager Jeff Jones
200 Campus Drive
Arvin, CA 93203

Re: Arvin PD Officer Involved Shooting of Elvis Villatoro on May 9, 2022
Officer Edwin Jimenez
Orchard on Sycamore Road east of South Edison Road in Arvin, CA.
Case Documented in Arvin Police Report AP22-0753 and
KCSO report 2022-00054143

Dear Mr. Jones,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed the reports and other materials submitted by 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 May 9, 2022, at approximately 11:34 a.m., Arvin Police officers were dispatched to 907 Walnut in Arvin to a report of a stolen vehicle. Officer Armando Pantoja arrived and contacted the victim. As the victim was providing additional information beyond the initial stolen vehicle report to the 911 dispatcher, she observed the suspect, Elvis Villatoro driving by in her stolen vehicle. Officer Pantoja advised other officers via his radio of the location of the stolen vehicle. Officer Edwin Jimenez, who was familiar with Villatoro had just arrived and immediately gave chase in his marked patrol vehicle. Officer Jimenez activated his emergency lights and siren and pursued Villatoro. The pursuit ended when Villatoro crashed into farming equipment as he attempted to negotiate a sharp left turn into the orchards off Sycamore Road.

Villatoro fled the vehicle and ran into the orchards. Officer Jimenez stated numerous times in English and Spanish to stop or that he would get tased. Officer Jimenez caught up to Villatoro and a brief scuffle ensued. Officer Jimenez attempted to tase Villatoro, but the prongs missed and Villatoro continued to flee. Officer Jimenez observed a red handled knife in Villatoro's right rear pants pocket. Villatoro reached for the knife and then suddenly turned towards Officer Jimenez holding the knife. Villatoro slashed at Officer Jimenez's neck region at which time,

Officer Jimenez leaned back and shot one round hitting Villatoro in his right upper arm. Villatoro fell on his back and Officer Jimenez told Villatoro to not move and advised over the radio “998,” indicating that an officer-involved shooting had occurred. Villatoro used his left hand and grabbed the knife and tossed it to his right side. Once additional units arrived, Villatoro was handcuffed and provided medical treatment. Villatoro survived his injury.

Legal Principles and Analysis

Villatoro’s conduct demonstrated a clear threat to the life of Arvin Police Officer Edwin Jimenez, who was attempting to effect a lawful arrest. At the time, Villatoro was evading a clearly marked Arvin Police patrol vehicle with its forward facing red lights, emergency lights, and siren and ultimately running away from Officer Jimenez after the vehicle pursuit disabled Villatoro’s vehicle.

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).). Officer Jimenez had probable cause to arrest Villatoro due to the felony theft of the vehicle, along with the personal observations of felonies having been committed in his presence. The felonies included Vehicle Code section 2800.2, felony evasion, Penal Code section 245(c), assault with a deadly weapon on a peace officer, and Penal Code section 69, resisting an executive officer.

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 835a(c)(1)(A).) When evaluating the use of deadly force, 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. 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 577 (*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 U.S. at p. 396.)

Officer Jimenez did not have the benefit of hindsight, but rather was faced with a situation where Villatoro fled from him in a stolen vehicle and when the vehicle became disabled, ran from Officer Jimenez, after having committed a felony in his presence. Further, while giving chase, Villatoro physically attempted to bring Officer Jimenez down to the ground and was able to continue fleeing. When Officer Jimenez's attempt to tase Villatoro was ineffective, Villatoro continued to flee. It was at that moment when Officer Jimenez observed the large kitchen knife in Villatoro's rear pants pocket and Villatoro reached for the knife, suddenly turned towards Officer Jimenez, and slashed at his throat area. Officer Jimenez fired one shot from his handgun to stop the threat. Officer Jimenez's beliefs in the necessary use of deadly force are reasonable under the circumstances.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department and Arvin Police Department, Officer Edwin Jimenez responded reasonably under the circumstances. There is no state criminal liability for the use of force under the circumstances of this case because the shooting was legally justified.

Sincerely,

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

Cynthia J. Zimmer
Kern County District Attorney