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October 18, 2019

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

Re: Officer-Involved Shooting of John Paul Jones and Deputy Charles Leask by Deputy Charles Moore on December 12, 2018 at 311 McCord Avenue in Bakersfield. KCSO report numbers #2018-00198367 and 2018-00198418.

Dear Sheriff Youngblood,

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 OIS Committee reviews cases for criminal liability under state law. The OIS Committee has completed its review. The findings are noted below.

Summary

On December 12, 2018, Deputies Moore and Leask lawfully contacted John Jones outside of a residence located at 311 McCord Avenue. The contact occurred at night and the area was poorly lit. Jones gave a false name and date of birth to deputies. Once it was discovered the name was false, Jones attempted to flee. A struggle ensued in which Jones and Deputy Leask fell down a flight of stairs onto the ground. Deputy Leask was on Jones' back with Jones' hands concealed underneath his body. Jones would not show his hands. A neighbor who witnessed the incident says Jones was moving, shaking and arching while on the ground with Dep. Leask. Per the witness, "Yeah, he was definitely resisting."

Deputy Moore's body camera footage does not show much in the dark, but it does provide audio, and a timeline. Dep. Leask can be heard giving commands and Jones can be heard resisting. Twenty-five seconds into the incident, Dep. Leask and Jones go from struggling in the doorway of the residence to falling down the stairs leading up to the front door. Thirty seconds into the struggle with Jones, Dep. Leask warns Jones "You're gonna get tased!" Then just two seconds

after that, Dep. Leask says, “Gun.” Two more seconds go by and Dep. Leask screams, “Gun!” Within two more seconds a gunshot is heard. Dep. Moore radios “998.” Jones is warned not to resist, or he will be shot again. Dep. Leask is heard telling Dep. Moore that he got shot in the hand.

Jones received a non-lethal through and through wound that entered the back of his right shoulder. A portion of the bullet passed through his shoulder and struck Dep. Leask in his left wrist that was underneath Jones.

Jones was armed with a 44 Magnum revolver that was loaded with six live rounds. The firearm was within arm’s reach when the shooting occurred. Dep. Moore believed that Jones was reaching for his firearm and Dep. Leask was struggling with being able to stop him from doing so. Dep. Moore says he made a split-second decision to use his firearm to stop the threat.



Jones’ Llama Super Comanche 44 Magnum revolver, loaded with 6 live 44 Magnum rounds

Jones recovered from his injury. He was charged with multiple felony violations in case BF174854A. On October 1, 2019, he entered a plea agreement for a felony conviction of Penal Code sections 69 (Resisting and Executive Officer), 148.10 (Resisting an Officer Causing Serious Bodily Injury), 29800 (Felon in Possession of a Firearm, and Health and Safety Code section 11378 (Possession of Methamphetamine for Sale). Under the terms of the agreement, Jones will be sentenced on November 4, 2019 to eight years in the California Department of Corrections.

Legal Principles and Analysis

California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury.¹ An officer who uses deadly force must actually believe that the force is necessary. The appearance of danger is all that is necessary; actual danger is not.²

Why didn't Dep. Moore wait until he could see Jones had the gun pointed at one of them before shooting?

The answer to above question is that it would be too late. A study entitled, "The Reasonableness of Reaction Time," conducted numerous simulations where officers knew they were responding to a call of a person with a firearm and were looking for a firearm when they made contact. A split-second decision had to be made based upon the reaction or lack thereof by the suspect. Despite the fact that the officers already had their guns drawn and pointed at the suspects—they were still shot at, and hit, by half of the suspects where the suspects attempted to shoot them. The authors concluded that "even when a police officer has his or her gun aimed at a suspect and the suspect is not aiming at the police officer, the police officer is still in extreme danger."³

In the present case, if Jones were reaching for his gun to shoot at the deputies—and it appeared to them he was—then there was only time for a split-second decision to respond. Both deputies were in extreme danger at that moment based upon the study above.

Courts acknowledge the danger and difficulty officers have in responding to a dangerous suspect. "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."⁴

Why didn't Dep. Moore use a taser, or some other less lethal alternative?

Courts also do not require the officer to use the least lethal means available as long the means chosen are reasonable. "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

¹ Penal Code section 835a

² *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.

³ "Reasonableness and Reaction Time," by Professor J. Pete Blair, published in *Police Quarterly* 2011.

⁴ *Graham v. Connor*, supra at pp.396-397.

moment. Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.”⁵

Although shooting a firearm is always a potentially lethal use of force, Dep. Moore put his firearm against the back of Jones’ right shoulder in an attempt to ensure that his use of a firearm was not lethal. He fired once, and the single shot went through Jones’ shoulder. Jones was no longer able to reach his firearm and the struggle ended.

Dep. Moore explained that Dep. Leask sounded terrified when he was yelling “Gun!” He had never heard him sound like that before. He knew it was serious. He was afraid they would be shot. He did not believe a Taser, baton or pepper spray would adequately address the threat. He has experienced failures in those uses of force in the past. He made a split-second decision to shoot out of fear that he and his partner were about to be shot.

Conclusion

Based upon a review of the evidence submitted by KCSO, Deputy Moore responded reasonably to a perceived lethal threat in self-defense, and defense of his partner. There is no state criminal liability for Deputy Moore’s use of force under the circumstances of this case because the shooting is legally justified.

Sincerely,



Cynthia J. Zimmer
District Attorney

⁵ *Scott v. Henrich* (1992) 39 F.3d 912, 915.