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August 25, 2020

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

Captain Scot Loetscher
California Highway Patrol – Bakersfield
9855 Compagnoni Street
Bakersfield, CA 93313

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

Re: Officer-Involved Shooting of Javier Vidal at 2919 Taft Hwy on April 13, 2020 involving KCSO Sgt. Jay Heisey, Senior Deputies Jessie Hernandez and Jose Perez, and Deputies Ralph Lomas, Phillip Campas, Dizander Guerrero, and Ryan Brock; BPD Sergeants Eric Littlefield and John Bishop, Senior Officers Louis James and Kyle McNabb, and Officer Brendan Thebeau; and CHP Sgt. Richard Pierce.

Dear Sheriff Youngblood, Captain Loetscher, and Chief Terry:

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed reports and other materials submitted by the Kern County Sheriff's Office 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 the night of April 12, 2020, Kern County Sheriff deputies responded to a call on Florence Street where they found Audreyanna Rivera, seven months pregnant and suffering a gunshot wound to the head. She was pronounced dead. Unsuccessful attempts were made to save her baby's life. The suspect, Javier Vidal, told his father that he "barely shot her." Vidal then fled the scene with a two-year old juvenile. An Amber Alert was issued. Vidal dropped off the two-year-old with a sister. He then fled to 2919 Taft Highway. Within two hours a citizen at that location called on the vehicle issued in the Amber Alert. When officers arrived searching for Vidal in the early hours of April 13, 2020, Vidal repeatedly fired at officers. SWAT was called to the scene as well as the Crisis Negotiation Team (CNT). Despite multiple attempts to have him surrender peacefully, Vidal continued to shoot at officers. Ultimately, Vidal was shot and

killed. Thirteen officers from BPD, KCSO, and CHP fired their service weapons during five different shootings over the course of four hours.

Legal Principles

Under Penal Code section 835a(c)(1), an officer is justified in using deadly force only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing felon that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

According to Penal Code section 835a(4), the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force. See also *Graham v. Connor* (1989) 490 U.S. 386, 396.

Analysis

On April 13, 2020 at 12:15am, Officer McNabb was searching Space 15 for Vidal at the location noted above. The front door was open and as he looked inside Officer McNabb was ambushed. Vidal was lying on the floor of the family room behind a stove that he moved into the room. As Off. McNabb looked inside Vidal fired at him. Off. McNabb retreated and returned fire. He looked inside the residence again and was shot at again by Vidal. Off. McNabb retreated while returning fire a second time. CHP Sgt. Pierce saw Off. McNabb being shot at. He fired into the residence at Vidal in an effort to protect Off. McNabb from being killed. Neither Off. McNabb nor Vidal were struck by gunfire during this first round of shooting. This shooting incident by police is legally justified as self-defense (Off. McNabb), and defense of another (Sgt. Pierce).

Vidal next shot at BPD Officers James and Armijo, as well as CHP Sgt. Pierce who were all taking cover behind a blue Mustang to the east of the residence. Officer James was struck by debris in the face as Vidal shot at them through the wall of the house. A bullet strike was found in the Mustang. The officers were not injured. They did not return fire at Vidal.

Non-lethal means were used to invite a peaceful surrender, but Vidal did not comply. Numerous PA announcements were made, including an invitation by Vidal's sister to surrender, but to no

avail. Vidal shouted profanities, said he had a 30-round magazine for them, and challenged officers to come and get him. Three chemical grenades were fired into the residence, but he did not comply. Vidal threw the last one out of the house while covering his face with clothing. Vidal could be seen by several officers during these efforts within the residence, but they did not use lethal force when he was not posing an imminent threat of harm.

At 2:12am Vidal fired at KCSO SWAT operators that were near the front of the residence. KCSO SWAT operators Lomas, Campas and Guerrero returned fire with their rifles. Neither Vidal nor the deputies were struck by the gunfire. This shooting incident by police is legally justified as self-defense (Guerrero and Campas), and defense of another (Lomas).

At 3:13am, KCSO SWAT operators Sgt. Heisey and Dep. Hernandez fired at Vidal as he escaped through the back of the residence and over the fence into the yard of another property. Vidal did not appear to be struck by the gunfire. They stopped firing at him after losing sight of him. Both Sgt. Heisey and Dep. Hernandez were aware that Vidal had murdered his pregnant girlfriend hours earlier and had tried to murder several police officers. They could see Vidal was still armed with a firearm. They were worried he was an imminent threat to other civilians and officers if he escaped. Their shooting at Vidal is legally justified as an attempt to apprehend a violent fleeing felon.

At 3:18am, Vidal began to climb another fence into a lot adjacent to Space 15 where a trailer was located. As he climbed over the fence BPD Sgts. Littlefield and Bishop as well as Officer Thebeau noted that Vidal pointed his firearm in their direction as he began to climb the fence. They feared for their safety. Officer James, who had been shot at previously, saw the firearm in Vidal's hand and feared for his safety. The four officers fired at Vidal as he went over the fence. They were joined by a KCSO SWAT operator, Dep. Campas, who also fired once with his rifle out of concern that Vidal would be able to harm civilians or officers if not immediately apprehended. All of the officers were aware Vidal had murdered his pregnant girlfriend and had attempted to murder multiple officers. Although Vidal did not fire at the officers while his gun was pointed in their direction, it is the *appearance* of danger that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639; see also PC 835a.) It was reasonable for the officers to be in fear of being shot at again given that Vidal was still armed, had shot at officers four different times already, and had murdered his pregnant girlfriend hours earlier. This shooting by police is legally justified as self-defense to a reasonably perceived threat (BPD officers), and as an attempt to apprehend a violent, fleeing felon (Dep. Campas).

Vidal was ordered to surrender peacefully throughout the night. This includes when Vidal was hiding under a trailer in Space 16. Vidal did not comply to verbal commands to come out peacefully. At 3:59am, Deputies Perez, Brock, Campas and Guerrero attempted to enter the gated lot where Vidal was hiding under the trailer. Deputies approached with a ballistic blanket as a shield, but it got caught on the gate and fell. As the deputies were exposed without cover, they saw Vidal looking up to see their positions and also reaching towards his waistband.

Believing he was reaching for his firearm to shoot them, these four deputies fired at Vidal. As noted above, Penal Code section 835a allows an officer to respond reasonably to a perceived threat. Dep. Brock fired six times, and the other three deputies each fired once—all with rifles. Vidal was struck by gunfire and killed. Once he stopped reaching for his firearm, the deputies stopped shooting. Courts have noted that, “It stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012, 2022.

The Coroner report shows Vidal suffered seven gunshot wounds and was killed instantly. The report also shows Vidal had a .08% blood alcohol concentration, and a high level of methamphetamine (over 600 ng/mL).

A 9mm firearm was located next to Vidal. It was loaded with one live 9mm round. This final, fatal shooting of Vidal by KCSO SWAT operators (Perez, Brock, Campas, and Guerrero) is legally justified as self-defense to a reasonably perceived threat.

Conclusion

Based upon a review of the evidence, the sergeants, officers and deputies involved as noted above responded reasonably to both actual and perceived threats in self-defense, defense of others, and also made lawful attempts to apprehend a violent fleeing felon. There is no state criminal liability for these uses of deadly force because the shootings are legally justified.

Sincerely,

A handwritten signature in black ink that reads "Cynthia J. Zimmer". The signature is written in a cursive, flowing style.

Cynthia J. Zimmer
District Attorney