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April 22, 2020

Chief Kent Kroeger  
Tehachapi Police Department  
220 West C Street  
Tehachapi, CA 93561

**Re: Fatal shooting of Juan Sillas at Red Apple and Westwood Blvd in Tehachapi by  
Tehachapi Police Officer Richard Kiser**

Dear Chief Kroeger,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed reports and other materials submitted regarding the shooting noted above. The evidence was submitted by the Kern County District Attorney Special Investigations Unit. 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 May 21, 2019 at approximately 9:30pm, Juan Sillas led TPD Officer Richard Kiser on a dangerous vehicle pursuit that ended with Sillas crashing into Officer Kiser's patrol vehicle. Sillas ignored commands to stop, exited his vehicle, and ran through a field. Officer Kiser pursued him through the field. Sillas turned back towards the officer and fired one shot from a 9mm handgun. Officer Kiser was not hit. Officer Kiser returned fire three times with his service weapon. Sillas was struck twice and killed.

***Legal Principles and Analysis***

According to Penal Code section 196, a homicide by a public officer is justified when committed in arresting a person charged with a felony who is fleeing or resisting arrest. Penal Code section 196 was enacted in 1872. Case law has clarified when deadly force is justified in pursuit of a fleeing felon.

Courts have interpreted the word "felony" in Penal Code sections 196, 197, 835a, and 837 to refer only to violent felonies. Therefore, deadly force may be used to arrest only if the crime is a "forcible and atrocious one which threatens death or serious bodily harm," or there is substantial

risk that the person will cause death or serious bodily harm if apprehension is delayed. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

The United States Supreme Court has also given guidelines for when deadly force may be used when pursuing a fleeing felon. “[W]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be necessary to prevent escape, and if where feasible, some warning has been given.” *Id.* at 11.<sup>1</sup>

Additionally, a person threatened with an attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of his right of self-defense a person may stand his ground and defend himself by the use of force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. “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* at p. 396.

When investigating the scene in this case, a 9mm handgun was found next to Sillas. A spent 9mm casing was also located at the scene. Officer Kiser was found to be in possession of his department issued .40 handgun. It was determined that he fired it at the scene three times. Sillas was struck Sillas twice.

Officer Kiser says that Sillas fired at him holding a firearm in his right hand. Sillas suffered a major injury to his right arm when Officer Kiser shot him. The injury is such that Sillas must have shot first because it would not have been possible to shoot with his right hand after Officer Kiser fired. That Sillas fired first is also corroborated by a civilian witness who describes hearing a single gunshot followed quickly by three gunshots.

Officer Kiser attempted to contact Sillas initially because he was a suspect in a recent shooting and believed to be armed and dangerous. The 9mm handgun Sillas was found in possession of had been stolen from a residence (along with numerous other items) in Tehachapi. The autopsy report shows that Sillas had a high level of methamphetamine in his system at the time of the shooting.

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<sup>1</sup> On January 1, 2020, Penal Code section 835a was amended to allow officers to use deadly force only for imminent threats to the officer or others. “Imminent” is defined as a situation where the suspect has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” The amendment occurred after the shooting in this case and therefore does not apply to this case.

***Conclusion***

Based on a review of the evidence, Officer Kiser reasonably acted in self-defense as well as in apprehending a violent, fleeing felon. There is no state criminal liability for the officer in this case because the shooting is 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**