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November 24, 2021

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

Re: In-Custody Death of Robert Waters by Deputies Daniel Garcia, Robert Gonzalez, Kolte Paxson, Alejandro Moreno, and Andrew Carney on April 30, 2020, at 714 Orchid Drive in Bakersfield, CA.

Dear Sheriff Youngblood,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed the reports and other materials submitted by your agency 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 the night of April 30, 2020, Deputies were dispatched to 2911 Park Meadows Drive in Bakersfield to multiple calls for a domestic disturbance involving a male subject, later identified as Robert Waters, and female victim. Deputies Daniel Garcia, Robert Gonzalez, Kolte Paxson, Alejandro Moreno, and Andrew Carney responded and as the investigation was ongoing. Updates via 911 calls included that the female victim was stabbed and that operators could hear Waters stating he was going to kill her. Waters left the initial scene on foot, going south on Park Meadows Drive and went East on Orchid Drive. Air One illuminated Waters as deputies approached him on foot. Waters failed to comply with multiple commands to put his hands up and to get on the ground. Waters attempted to run past deputies but was physically apprehended by a K-9 and multiple deputies. Once deputies were able to get Waters on the ground, he continued to struggle with the K-9 and the deputies, failing to follow further commands. Waters grabbed the K-9's genitalia and twisted it during the struggle. Deputies were ultimately able to detain Waters and handcuff him. While Waters was face down and handcuffed, he kept physically resisting and yelling. Waters kept hitting his head on the concrete and had to be restrained to prevent further harm to himself. While Waters was on the ground, deputies restrained him by holding down his extremities as he continued to resist. Medical personnel were staged immediately near the deputies and Waters. After a few minutes elapsed, Waters stopped talking and then deputies rolled him into a recovery position on his

side. Waters still was not talking but began convulsing as if he was having a seizure. Medical personnel immediately attended to Waters, but he was declared deceased.

Legal Principles and Analysis

Robert Waters' conduct in running from Deputies Daniel Garcia, Kolte Paxson, Alejandro Moreno, and Andrew Carney after being lawfully attempted to be stopped and detained was a violation of Penal Code section 148(a)(1), delaying or resisting a peace officer in the performance of his duty. 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). Deputies Daniel Garcia, Kolte Paxson, Alejandro Moreno, and Andrew Carney had reasonable suspicion to detain Robert Waters due to the reported felonies he committed. Those felonies included Penal Code section 664/187(a), attempted murder, Penal Code section 245(a)(1), assault with a deadly weapon, Penal Code section 245(a)(2), assault with a firearm, Penal Code section 422, criminal threats, and Penal Code section 273.5, corporal injury to dating partner.

“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.) Deputies Daniel Garcia, Robert Gonzalez, Kolte Paxson, Alejandro Moreno, and Andrew Carney did not have the benefit of hindsight but rather were faced with a situation where Robert Waters continued to resist law enforcement by rocking side to side and hitting his head on the concrete while yelling at the deputies. In order to prevent further harm to himself and to limit Robert Waters' resistance, the deputies each secured a portion of his body. Ultimately only Deputies Paxson, Moreno and Carney maintained a hold on Waters' extremities just prior to Waters beginning to thrash around again. Waters was placed into a recovery position by the deputies while medical personal checked on him. However, Water again started thrashing around causing deputies to hold onto him again. After checking on Waters, medical personal announced that Waters was not breathing and immediately began life saving measures. Deputies Daniel Garcia, Robert Gonzalez, Kolte Paxson, Alejandro Moreno, and Andrew Carney beliefs in the necessary use of force were considered reasonable under all the circumstances.


Further consideration must be given to the fact that Deputy Robert Gonzalez continued apply pressure to Robert Waters's lower back and Deputies Paxson, Moreno, and Carney, continued to hold Robert Waters' extremities while Robert Waters was in a prone position and handcuffed. Their actions did not change the legal analysis considering all the circumstances. Robert Waters continued to resist and move about while being handcuffed and continued to yell out during the time he was in the prone position. The decision by Deputies Robert Gonzalez, Alejandro Moreno, and Andrew Carney to continue to apply a hold onto Robert Waters was a reasonable one. Medical personnel from both the Fire Department and Hall Ambulance were immediately in the area and assessing the situation alongside the deputies as Waters was on the ground.

The use of force was exacerbated by the medical condition of Robert Waters who had almost thirty times the therapeutic dose of Bupropion in his system. Waters had 6,500 ng/mL of Bupropion in his femoral blood, well within the lethal range. Further, adverse effects of overdose may include agitation, seizures, confusion, tremors, and death. All these effects were seen in Waters before and during the incident. The cause of death by the coroner was identified as Bupropion with other contributing factors.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department, Deputies Daniel Garcia, Robert Gonzalez, Kolte Paxson, Alejandro Moreno, and Andrew Carney responded reasonably under the circumstances. There is no state criminal liability for each of the deputies' use of force under the circumstances of this case.

Sincerely,


Cynthia J. Zimmer
District Attorney