



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KERN

CIVIC CENTER JUSTICE BUILDING
1215 TRUXTUN AVENUE
BAKERSFIELD, CALIFORNIA 93301
(661) 868-2340, FAX: (661) 868-2700

ANDREA S. KOHLER
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

August 5, 2022

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

**Re: BPD Officer-Involved Shooting of Abraham Meza on June 24, 2021
Officer Ruben Guerrero
Southbound Highway 99 at Houghton Road exit, Bakersfield, CA
Bakersfield Police Department report number 2021-120858**

Dear Chief Terry,

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 Officer-Involved Shooting Committee reviews cases for criminal liability under state law. The Officer-Involved Shooting Committee has completed its review. The findings are noted below.

Summary

On June 24, 2021, at around 4:20am, BPD Officers Cavazos and Guerrero were leaving a call for service on Custard Avenue when they noticed a suspicious vehicle. A red Chevrolet Avalanche was parked along the left side of the roadway, facing the wrong way, with the rear of the truck extending into the roadway. When officers used a spotlight to illuminate the cab, all three Hispanic males occupying the vehicle tried to hide their faces, and the rear passenger began to move his hands as if manipulating something. The location of the vehicle and the reaction of the occupants to police presence made both officers reasonably suspicious, and they decided to conduct a traffic enforcement stop to further investigate.

As the police vehicle made a U-turn and got behind the suspect vehicle, Officer Guerrero could see the occupants looking at officers in the vehicle mirrors and talking to each other, which was immediately followed by the Avalanche driving away. Officer Guerrero saw the Avalanche make a turn without signaling as it fled. Officer Cavazos turned on lights and siren of the patrol vehicle to further effect the traffic stop, and the Avalanche turned and accelerated quickly. While actively evading the pursuing officers on city streets, the Avalanche fled at speeds ranging from 60 miles per hour to 80 miles per hour, until the vehicle eventually entered Southbound Highway 99 from Ming Avenue. The Avalanche continued to be driven at speeds reaching 100 miles per hour and swerved on and off the freeway at various exits until eventually crashing into a tree at the Houghton Road exit from southbound Highway

99. The high-speed vehicle chase lasted approximately 6 minutes.

Due to the substantial amount of dust in the air from the crash and the limited visibility due to the lighting conditions, officers did not know where all of the suspects were at the time officers first got out of their patrol vehicles. Officer Cavazos immediately began yelling, “Hands! Hands! Hands! Hands! Hands! Bakersfield Police! Bakersfield Police!” and soon after Officer Guerrero saw Abraham Meza wearing a black backpack running directly towards active lanes of traffic on Highway 99, away from the scene of the crash. Officer Guerrero could see that Meza had a shotgun in his hands as Meza ran towards moving cars containing civilian motorists, and immediately yelled that he was going to shoot the Meza, but the suspect still didn’t drop his shotgun and continued to flee from officers.

Just as Meza was about to cross the white line and enter a traffic lane on highway 99, he began to slow down, and turned to look at Guerrero. As Meza turned, he still had the shotgun in his hands, and was holding the shotgun at a low-ready position, from which he could have shot Officer Guerrero. Only when Meza, still holding the shotgun, turned it towards Officer Guerrero did Officer Guerrero respond by employing deadly force, where he fired his duty weapon 9 times, and stopped firing once Meza was down. Two other suspects from the vehicle were eventually found. Lifesaving measures were attempted, but Meza ultimately died from his wounds. Meza was pronounced deceased by Hall Ambulance personnel at 4:54am. Both surviving suspects from the Avalanche faced charges related to this incident.

Legal Principles and Analysis

Under Penal Code section 835a(a)(2), “it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.”

Penal Code 835a(a)(3) states, “the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.”

Penal Code section 835a(a)(4) states, “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.”

In *Graham v. Connor* (1989) 490 U.S. 386, the Supreme Court clarified that the “reasonableness” test is an objective one, rather than subjective, but that the analysis should consider the perspective of a reasonable officer in the same position:

“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...The calculus of reasonableness must embody allowance for the fact that police 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. As in other Fourth Amendment contexts, however, the ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively

reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (Id. at 396).

In this case, Meza was in possession of a loaded Mossberg 12-gauge shotgun¹, despite numerous commands for "hands," numerous audible warnings that they were police, and a warning that the suspect would be shot, all of which came after Meza had been a participant in a six-minute-long high-speed vehicle pursuit in which officers were pursuing the Avalanche with lights and sirens activated. The presence of the deadly weapon, the type of weapon, and the totality of circumstances leading up to the confrontation were critical to the officer's decision to employ deadly force. The officer described seeing the weapon and knowing that Meza could disable the officer even with a quick, indirect hit, due to the spread pattern of buckshot 12-gauge ammunition. Officer Guerrero further described how the suspect was holding the shotgun with two hands at the 'low ready' position, from which he could have easily fired at the officer or at a passing motorist.

Officer Guerrero believed that himself and motorists were in imminent danger of being killed or suffering great bodily injury. Officer Guerrero described the totality of the circumstances that led him to the conclusion that, at the moment of the shooting, Meza put the officer and innocent civilian drivers in imminent danger of being killed or suffering great bodily injury. Guerrero described in detail how the suspect's refusal to drop the shotgun, after being involved in a very dangerous high-speed pursuit that ultimately ended in a crash, contributed to his fear that Meza's intent was either to shoot Guerrero or use the weapon to carjack a passing motorist and continue his flight from police. As noted above, Guerrero knew that the shotgun (as opposed to a handgun) could take him out of the fight even without a direct hit, so Meza may not need to take time to aim the shotgun. Officer Guerrero also considered the fact that the weight and size of the shotgun meant that if Meza was still carrying it despite police commands and despite also trying to run away, he must be carrying it because he intended to use it (on the officer or a passing motorist), since the shotgun was slowing him down, making it less likely that he would be able to outrun Guerrero. In other words, if the suspect was only trying to flee, he would have dropped the shotgun. Guerrero also considered the possibility that Meza would use the shotgun to carjack a passing motorist, as Guerrero was involved in a fleeing suspect investigation within weeks of this OIS, in which the suspect did in fact use a firearm to carjack a nearby motorist to continue fleeing from police.

In terms of the timing of the threat to the officer, Officer Guerrero described the fact that after running with the shotgun for some distance (from the crashed Avalanche to the side of the highway lane of traffic) Meza began to slow down, as if he was about to turn around and shoot the officer, and began to look at the officer and to turn toward him, still with the shotgun in his hands at the low ready position. In terms of the timing of Meza's imminent threat to passing motorists, Guerrero did not shoot until Meza's lead foot was mere inches from a lane of traffic on highway 99; in fact, both Guerrero and Meza were nearly hit by passing big rigs at various points immediately after the shooting.

Officer Guerrero considered less lethal options but concluded that those options would create a greater risk of harm for himself and others and would not be effective. He considered a control hold but believed the distance between the suspect and Guerrero made it unlikely that a control hold would be effective, particularly since Guerrero would need to holster his weapon, thus putting him in a position of disadvantage against a suspect that is holding a 12-gauge shotgun at the low-ready position. A similar argument exists against the use of a baton or other control device. Guerrero considered using the taser when he first saw the suspect, but he knew that the taser would not be effective, since the suspect was wearing a backpack and the darts would not penetrate to make contact with the suspect. Finally,

¹ Meza was also had two loaded 9 millimeter handguns in his backpack.

Guerrero considered using pepper spray, but believed that the distance between the suspect and himself, the fact that they were running, that the suspect was initially facing away from him, and the fact that there was significant wind movement due to passing big rigs (moving at freeway speeds), made it likely that deploying pepper spray would not affect the suspect, but could very likely affect the officer's ability to see.

The risks associated with using less than lethal force were increased for Guerrero here, both because backup units were still some distance away, and because there were two other suspects in the area who might also be armed and may have been lying in wait to ambush officers.

Guerrero fired his weapon only enough to eliminate the immediate threat, and ceased employing additional deadly force as soon as it was clear that the suspect was down and was no longer holding the shotgun. Although he did fire nine rounds, Officer Guerrero did so very quickly, and in direct response to an immediate threat, and he stopped firing as soon as that threat was over.

Conclusion

Based upon a review of the evidence submitted by the Bakersfield Police Department, Officer Guerrero responded reasonably to a lethal threat in self-defense and defense of others. There is no state criminal liability for their uses of deadly force under the circumstances of this case because the shooting is legally justified.

Sincerely,



Cynthia Zimmer
Kern County District Attorney