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January 12, 2024

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

**Re: KCSO Officer-Involved Shooting of Edgar Rojas on December 2, 2022
Kern County Sheriff's Deputy Michael Valdez
Locust and Desert Streets, Rosamond, CA
Documented in KCSO Report 2022-0014121**

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 December 2, 2022, at approximately 3:03 a.m., Kern County Sheriff's Deputies Michael Valdez and Danielle Henderson were dispatched to the Sierra Vista mobile home park located at 2421 Sierra Highway in Rosamond. The reporting party advised that she resided at the mobile home park and that there was a suspicious male wearing a black hooded sweatshirt, white t-shirt, and black gym shorts, that was attempting to open vehicle doors within the mobile home park. Deputies Henderson and Valdez each arrived in the area in their own single-unit patrol vehicles and in full uniform. As they approached the area, the deputies observed Edgar Rojas walking in the area, and he matched the physical description of the person alleged to be attempting to open car doors within the mobile home park. The deputies turned to follow Rojas, who then began running away from the deputies.

At this point, Deputy Henderson continued to the mobile home park in an effort to confirm whether any vehicles had been entered unlawfully, while Deputy Valdez continued to pursue Rojas in his patrol vehicle. Deputy Valdez caught up to Rojas in an alley, and Rojas produced a semi-automatic firearm and

fired a shot in the direction of Deputy Valdez' patrol vehicle. The shot missed, and Deputy Valdez radioed to advise of the shooting. Deputy Valdez did not return fire at this time.

Deputy Valdez ultimately gave pursuit of Rojas, exiting his patrol vehicle to do so. As Deputy Valdez rounded the corner of Locust Street and Desert Street, Rojas fired a shot at Deputy Valdez, which again did not hit the deputy. Rojas continued to flee and as Valdez continued to approach, Rojas fired an additional two shots in rapid succession. One of the bullets fired by Rojas struck Deputy Valdez in the left side of his head. Deputy Valdez returned fire at this point, firing seven rounds from his .40 caliber handgun in the direction of Rojas. Rojas was not struck by Deputy Valdez's return fire. The wound suffered by Deputy Valdez was a graze wound to his scalp, and Deputy Valdez retreated to his patrol car, stumbling along the way, as the wound caused him to be disoriented. Once back at the relative safety of the patrol car, Deputy Henderson met up with Deputy Valdez and began to assist with medical aid to Deputy Valdez headwound, which was bleeding considerably.

Additional units responded and located Rojas as he exited a detached garage to a residence on Desert Street. Responding deputies secured Rojas' arrest without further deadly force being deployed, and upon his arrest, Rojas was found in possession of a 9mm handgun in his waistband.

Legal Principles and Analysis

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(c)(1)(A) reads in part, "[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary...[t]o defend against an imminent threat of death or serious bodily injury to the officer." (Pen. Code, § 835a(c)(1).) A peace officer is also justified in using deadly force "[t]o apprehend a fleeing person for any felony 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," and, "[w]here feasible... 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. (Pen. Code, § 835a(c)(1)(B).) Putting a suspect on notice may include objective demonstrations of intent, such as a raised firearm. (*Estate of Morgan v. Cook* (8th Cir. 2012) 686 F.3d 494, 498.) For instance, when an officer raises his firearm and points it at a suspect, that should put the suspect on notice that "escalation of the situation would result in the use of the firearm." (*Ibid.*)

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).

Deputy Valdez followed Rojas, who matched the description of a vehicle tampering/burglary suspect, and who fled from officers without provocation. During the pursuit, Rojas fired multiple shots toward Deputy Valdez before Deputy Valdez employed any lethal force options. Deputy Valdez had a responsibility to apprehend Rojas, who, having already fired at Deputy Valdez and his patrol vehicle, presented an immediate threat of death or serious bodily injury unless immediately apprehended. Rojas clearly and unequivocally presented himself as what Penal Code Section 835a defines as an imminent threat which Deputy Valdez was justified to defend against by use of deadly force.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department, Deputy Valdez responded reasonably in self-defense and in a lawful attempt to apprehend a fleeing felon that had proven an imminent threat unless immediately apprehended. There is no state criminal liability for Deputy Valdez's use of deadly force under the circumstances of this case because the shooting is legally justified.

Sincerely,

Cynthia J. Zimmer
Kern County District Attorney