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

February 18, 2022

Re: OIS at 35102 Merle Haggard Drive in Bakersfield on 1/19/21; KCSO Deputy Rogelio Medina

Dear Sheriff Youngblood:

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 Committee reviews cases for criminal liability under state law and has completed its review. The findings are noted below.

Summary

On January 19, 2021, the Kern County Sheriff's Department conducted a joint undercover Narcotics Operation with the Drug Enforcement Administration at the Panda Express parking lot on Merle Haggard Dr. in Bakersfield, CA. This operation was set up by DEA Agent Kit as an undercover buy for Fentanyl and her partner was Kern County Sheriff Deputy Medina.

The same uncover officers had previously purchased a smaller amount of Fentanyl from suspect Adrian Rodriguez-Cardenas a week before and had now made arrangements for a significantly larger amount. Undercover Agent Kit had been messaging Rodriguez-Cardenas and made plans for the location and amount for the sale. When Rodriguez-Cardenas arrived, he was in the passenger seat while Keisean Rockmore drove the suspect vehicle and Levi L. was in the back seat. Undercover officers only expected to meet with Rodriguez-Cardenas and believed the suspects were behaving suspiciously.

When officers approached, Rodriguez-Cardenas insisted that Agent Kit conduct the buy inside the vehicle. For safety purposes, both undercover officers refused, but Agent Kit agreed to open the back door of the car and lean into the vehicle to conduct the purchase.

During the attempted transaction, the suspects tried to get Agent Kit to turn over the money before they gave her any of the drugs. They swore that they had the drugs, even though Agent Kit did not see or hear anything inside the bag they were using to show her. Levi L. grabbed Agent Kit and attempted to force her into their vehicle, trying to keep her in the car and grab the cash that she was holding. Levi L. pointed a handgun at both officers during the operation and stated that he was going to kill them. In response, Deputy Medina pulled Agent Kit back from the car and braced for gunfire because he expected Levi L. to shoot at them. Levi L.'s gun was not fired, but he continued to look outside the vehicle and point his gun at both undercover officers as they backed away. Deputy Medina drew his firearm and shot towards the suspect and the suspect

vehicle as Levi L. pointed the gun at both undercover officers. Once Deputy Medina fired his weapon, the suspect vehicle fled the area. No subjects were injured during this incident. Sheriff's Deputies followed the vehicle to an apartment complex and located the loaded firearm near one of the fleeing suspects.

Justified Use of Force

There is no homicide, but Deputy Medina used lethal force against Levi L. in this case. Lethal force, even when it results in a homicide, is justified where three elements are met: 1) A person reasonably believes that he, or someone else, is in imminent danger of being killed or suffering great bodily injury, 2) the person reasonably believes that the immediate use of deadly force is necessary to defend against that danger, and 3) the person used no more force than was reasonably necessary to defend against that danger. (Penal Code section 197; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; CALCRIM 505). There is no duty to retreat from the danger. (*People v. Hughes* (1951) 107 Cal.App.2d 487, 493; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22; CALCRIM 505).

In deciding whether an officer who fired his or her weapon did so lawfully, one must consider what a reasonable person would have done in a similar situation with similar knowledge and experience. One must decide whether the officers' beliefs and actions were objectively reasonable under all of the circumstances known to him or her, as they appeared at the time. "The calculus of reasonableness must embody allowance for the fact that peace 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." (*Graham v. Connor*, supra at pp.396-397). For the use of deadly force to be "objectively reasonable," the officers must have probable cause to believe that the suspect posed a significant threat of death or serious physical injury to an officer or others. It is clearly reasonable for someone to believe their life is in danger when a firearm is pointed at them.

In this case, the elements are met because it was reasonable for Deputy Medina to believe that he and Agent Kit were in imminent danger of being killed or suffering great bodily injury, it was reasonable for him to believe that the use of deadly force is necessary to defend against that danger, and he did not use excessive force. The suspects placed both Deputy Medina and Agent Kit in a deadly situation. Not only did it appear as if they were trying to rob and kidnap Agent Kit, but Levi L. pointed a firearm at both undercover officers. It is reasonable that Deputy Medina believed his life and Agent Kit's life was in danger when the suspected pointed a gun at him and said that he was going to shoot them. The suspects had already committed a dangerous drug sale, they were willing to rob the undercover buyers using a firearm, and they were willing to grab Agent Kit in an attempt to kidnap her and take her money. Any reasonable person in the same situation would have believed that deadly force was necessary.

Alternative Uses of Force Not Required and Not Reasonable

When considering other conduct or actions that Deputy Medina could have taken, courts give great deference to the police when choosing what weapon to use responding to a threat. "Monday morning quarterbacking is not allowed." (*Graham v. Connor*, 490 U.S. 386, 396 (1989)). "Detached reflection cannot be demanded in the presence of an uplifted knife." (*Brown v. United States*, 256 U.S. 335, 343 (1921) (Holmes, J.)).

For example, even though Deputy Medina pulled Agent Kit back and backed away from the vehicle, 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). Not only was Deputy Medina not required to retreat or flee, but the suspect continued to lean out of the car and point his firearm towards Deputy Medina and Agent Kit even after they had stepped away from the vehicle. The threat

continued towards both officers and the need for lethal force continued.

Because this was an undercover operation, Deputy Medina had limited options in his use of force. The United States Supreme Court has addressed the issue of choosing between two forms of force as well and, in circumstances where it is reasonable, have supported an officers' choice in which force to use.¹ The nature of the undercover operation prevented either Officer from carrying other use of force options. They were unable to carry batons, pepper spray, or tazers. In fact, only Deputy Medina had a firearm because Agent Fits could not compromise her undercover status by carrying any weapons.

Use of Force Justified Before Suspect Fired Shot

Lastly, Deputy Medina was not required to wait until Levi L. fired a round before he used deadly force. The Court cited a previous car chase case where the person evading in a stolen police car had not done anything dangerous yet in the pursuit. "[T]he law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect..." (*Id.* at 311; *citing Long v. Slaton* (2007) 508 F.3d 575, 581-582) "The court rejected the notion that the deputy should have first tried less lethal methods, such as spike strips...we think the police need not have taken that chance and hoped for the best." (*Id.* at 312; *citing Long v. Slaton* (2007) 508 F.3d 575, 583). "All determinations of unreasonable force, however, '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.'" (*Graham* at 396-397).


The "split second decision" on whether or not to shoot is literally that. Several studies have been done to illustrate how much time an officer has to decide in reacting to a person who may or may not be about to assault them with a firearm.² The authors concluded that "even when a police officer has his or her gun aimed at a suspect and the suspect is not aiming at the police officer, the police officer is still in extreme danger."³

The law in no way requires Deputy Medina to wait to be shot at before he uses deadly force. Rather, Levi L.'s actions in pointing the gun at the officers and telling them that he was going to shoot them, having just attempted to commit multiple violent crimes, is enough to place Deputy Medina in fear of imminent danger of great bodily injury.

Conclusion

Based upon a review of the evidence submitted by Kern County Sheriff's Department, Deputy Medina 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 J. Zimmer

Kern County District Attorney

¹ In *Mullenix v. Luna* (2015) 136 S.Ct. 305, officers had prepared a spike strip to stop a lengthy, dangerous pursuit. One officer, however, fired a rifle at the suspect's moving car from an overpass in an attempt to destroy the engine and disable the vehicle. The officer did so just prior to the vehicle reaching the spike strip. Instead of hitting the engine block, the officer struck the suspect killing him. The court supported the officer's use of force—choosing to fire instead of waiting to try the spike strip.

² For example, in a study by the Force Science Institute, it was determined that a suspect can make a motion for their waistband and fire at an officer within a quarter of a second. In contrast, during a study with the Los Angeles Police Department, it took officers between 1.17 to 2.36 seconds to respond to a buzzer and shoot while having a holstered, snapped firearm on their side. The authors of the study note that real world conditions outside of a laboratory setting would require more time for the officer to process the danger and react. Even under these faster controlled conditions, the officers were taking 4.5 to 9 times longer than the suspect to fire.

³ "Reasonableness and Reaction Time," by Professor J. Pete Blair, published in *Police Quarterly* 2011.