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November 22, 2021

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

Re: Officer-Involved Shooting of Mickel Lewis by Deputy Jason Ayala on October 2nd, 2020, at K Street and Mono Street in Mojave 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

Deputy Jason Ayala was assigned to the Kern County Sheriff's Department Mojave substation. On the night of October 2nd, 2020, Deputy Ayala received information Mickel Lewis Sr. was armed with a firearm. Lewis Sr. was on active probation with search terms. Deputy Ayala located Mickel Lewis Sr. driving a Chevrolet Tahoe in the drive-through of the Wienerschnitzel in Mojave CA. In the vehicle with Lewis Sr. were his girlfriend and her two teenage daughters. Deputy Ayala initiated a traffic stop near the intersection of K and Mono Streets northeast of the Wienerschnitzel. Deputy Ayala approached Lewis Sr., asked him out of the vehicle, patted him down and found no weapons on his person. Lewis Sr. appeared under the influence of methamphetamine (a post-mortem toxicology screen of Mickel Lewis Sr.'s blood taken at the autopsy revealed the presence of 360 ng/ml of Methamphetamine). Deputy Ayala instructed Lewis Sr. he was going to do a probation search of his vehicle and Lewis Sr. responded, "fuck you, you can't search my car." Lewis Sr. was told to place his hands on his head, but he then lunged at Deputy Ayala and ran from him. Deputy Ayala radioed a request for backup. Lewis Sr. was told he was under arrest and could not leave. Lewis Sr. ran back to the open driver side door of his vehicle and began to reach under the driver seat. Deputy Ayala drew his sidearm believing Lewis Sr. was reaching for a firearm in the vehicle. Lewis Sr. stepped out

of the vehicle with a hand behind his back. While exiting Lewis Sr. made the statements “you’re going to have to kill me” and “you’re going to die.” Lewis Sr. sprinted at Deputy Ayala while appearing to conceal a firearm behind his back. Lewis Sr. closed the distance to approximately one foot of Deputy Ayala, close enough to where he could possibly grab Deputy Ayala’s firearm. Deputy Ayala watched Lewis Sr. bring his hand from his back and fearing for his life fired five rounds killing Mickel Lewis Sr.

Lewis Sr.’s girlfriend exited the vehicle after the shooting and walked to a vacant lot east of the Wienershnitzel where a loaded 9mm firearm was later located by police. Lewis Sr.’s girlfriend stated Lewis Sr. was in possession of the firearm earlier that evening and she had taken it from under the driver’s seat and placed it in her purse prior to her and Lewis Sr. picking up her daughters and going to the Wienershnitzel, where they were pulled over. Lewis Sr.’s girlfriend admitted to discarding the firearm in the area after the shooting and did not initially tell the investigating deputies about it because her fingerprints were likely on it.

Legal Principles and Analysis

Mickel Lewis Sr.’s conduct in lunging at and running from Deputy Ayala after being lawfully stopped and detained was a violation of Penal Code section 148(a)(1), 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). Deputy Ayala had reasonable cause to arrest Mickel Lewis Sr.

An officer may use deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (CA Penal Code section 835a(c)(1)(A).) When evaluating the use of deadly force, one must decide whether the officers’ beliefs and action were objectively reasonable under all 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. The law does not impose a duty to use less lethal options. “Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. (*Scott v. Henrich* (9th Cir.1994) 39 F.3d 912, 915). The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577 (*overruled on other grounds*); *People v. Jackson* (1965) 233 Cal.App.2d 639.) “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.)

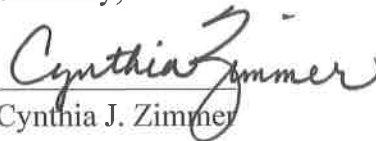
Deputy Ayala did not have the benefit of hindsight but rather was forced to make a split-second decision in the face of a charging suspect whom he believed was armed with a firearm. Lewis Sr. was known to Deputy Ayala to be in possession of a firearm, appeared to be under the influence of methamphetamine, had advanced to the driver side of his vehicle where he appeared to be searching for a gun, made a threat to kill Deputy Ayala, resisted Deputy Ayala's commands, concealed his right hand, and charged at Deputy Ayala. Deputy Ayala retreated and waited until Lewis Sr. was dangerously close to his person and a deadly confrontation was imminent. It was at that point and upon seeing Lewis Sr. removing his hand from behind his back that Deputy Ayala made the decision to shoot. Deputy Ayala was forced to make a split-second decision to either shoot or risk being shot. Deputy Ayala's beliefs in the threat and need to defend his life must be considered reasonable under all the circumstances.

Further consideration must be given to the fact that Deputy Ayala discharged his service weapon 5 times. That does not change the legal analysis considering all the circumstances. The response to a deadly threat cannot be excessive whether acting in self-defense or in the line of duty as a peace officer authorized to use deadly force. Deputy Ayala fired five total rounds hitting Lewis Sr. with all five shots under the circumstances described above. *Plumhoff v. Rickard* (2014) 572 U.S. 765 explained: "It stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Id.* at 777. The decision by Deputy Ayala to shoot Lewis Sr. to protect his personal safety was a reasonable one. It was therefore reasonable for Deputy Ayala to fire five rounds and not stop shooting until the threat was ended.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department, Deputy Jason Ayala responded reasonably in self-defense to the threat presented. There is no state criminal liability for his use of deadly force under the circumstances of this case and the shooting is legally justified.

Sincerely,



Cynthia J. Zimmer
District Attorney