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October 28, 2022

Chief Greg Terry
Bakersfield Police Department
1601 Truxtun Ave.
Bakersfield, CA 93301

**Re: BPD Officer-Involved Shooting of Jesus Javier Aleman on April 20, 2022
Officer Brock Peterson
1601 Planz Rd [Planz Park], Bakersfield
Bakersfield Police Department Report Number 2022-75031**

Dear Chief Terry:

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 April 20, 2022 at about 12:20 a.m., Bakersfield Police Department Officers Brock Peterson and Anthony Berumen were on patrol in marked black and white patrol vehicle. While patrolling the area of Planz Road and South H Street, in Bakersfield, the officers observed a red Chevrolet Tahoe travelling westbound on Lacey Street. The officers attempted to follow the Tahoe, which subsequently began to accelerate before turning into the north alley of the 1900 block of Lacey Street. The officers observed the Tahoe continue at a high rate of speed through the alley. The officers saw the Tahoe again after it began turning onto South H Street. The officers attempted to conduct a traffic stop on the vehicle by activating their overhead light and siren, but the Tahoe did not immediately yield. Instead, the vehicle began an eastbound turn from South H Street onto Planz Road, and during the turning movement the driver apparently lost control, resulting in the Tahoe colliding with the northwest curb line of Planz park, and into a series of bollards that effectively disabled the Tahoe from further movement.

Immediately after the collision, the officers saw two people exiting the Tahoe. Officer Berumen immediately contacted and detained the driver of the Tahoe and remained with the driver near the collision scene. However, the second person to exit the Tahoe, Jesus Javier Aleman, began fleeing the scene in a southbound direction and into Planz Park. Officer Brock Peterson began pursuing Aleman on foot throughout the park. During the foot pursuit, Officer Peterson, who was in full BPD uniform, shouted commands for Aleman to stop, but Aleman repeatedly did not comply. As Aleman's refusal to submit to the Officer Peterson's commands became apparent, Officer Peterson drew his Taser, and gave additional warnings to Aleman that if he did not stop that the taser would be used.

The foot pursuit passed into the skatepark area of Planz Park, where two uninvolved witnesses were present. The witnesses observed Aleman running with Officer Peterson in chase. The well-lit skatepark area, combined with the perspective of the witnesses, allowed the witnesses to see what Officer Peterson thus far had not – that Aleman was holding a handgun as he was running from Officer Peterson. The witnesses used cellular telephones to record the portion of the pursuit they saw, and their contemporaneous comments and the videos they captured make clear that Aleman was holding a firearm as he fled from Officer Peterson.

Officer Peterson continued his foot pursuit of Aleman through the skate park and toward the eastern edge of Planz park. Just as Officer Peterson was within a few feet of Aleman, Aleman stopped, turned, and fired two shots from a 9mm handgun at Officer Peterson. Officer Peterson was clearly surprised by the sudden assault and attempt on his life. Officer Peterson's body-worn camera, as well as the witnesses' cellular phone videos captured the sounds of Aleman's gunshots, and Officer Peterson was at such close range to Aleman when the shots were fired that he could feel the muzzle blast from Aleman's shots on the left side of his head. In addition to being fired directly at officer Peterson, Aleman's shots also were fired in the direction of the two witnesses that remained filming at the skatepark.

Without stopping, Officer Peterson redirected to run north around a series of bushes that line the eastern edge of Planz park, effectively circling around Aleman while using the bushes for cover and concealment from the possibility of further shots being fired from Aleman, who appeared to continue to attempt to track Officer Peterson's movements. When Officer Peterson re-emerged from the bushes, he was positioned north of Aleman, who then began running southeast, toward a tree that was along the eastern edge of the park. Aleman maintained possession and control of the firearm he had already twice fired, and was running toward an area that, if reached, would have provided him cover and a position of advantage over Officer Peterson and other officers responding from the north.

Having already been shot at twice by Aleman, Officer Peterson was then engaged in an active gun-battle with Aleman. Officer Peterson responded by firing a total of eleven shots from his department-issued handgun. Four of the shots struck Aleman, with the strikes occurring primarily in his mid to upper back and the back of his upper left arm. Aleman fell down near a tree, and Officer Peterson did not fire any shots after Aleman had fallen to the ground. Offer Peterson and two other officers that had just run up to assist all approached Aleman and kicked his handgun aside before applying medical aid. Jesus Javier Aleman did not survive his injuries and was pronounced deceased shortly thereafter.

Legal Principles and Analysis

Penal Code section 835a was amended by the CA legislature in 2019. As of January 1, 2020, the standard for the use of deadly force by a peace officer in California is defined as follows:

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect arrest, to prevent escape or to overcome resistance.

(c)(1) Notwithstanding subdivision (b), 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 for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or another person.

(B) To 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. Where feasible, a peace officer shall, 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.

(CA Penal Code section 835a.)

When Officer Peterson chased Aleman from the collision scene, his actions were well within the duties of a police officer. Aleman's unprovoked flight from the collision and despite the repeated commands to stop issued by a uniformed police officer were more than sufficient to justify his detention and the reasonable force required to attain it. What Officer Peterson did not know as he began chasing Aleman was that Aleman was holding a loaded, operable handgun. While it is impossible to know with certainty Aleman's intentions, the fact that Aleman possessed a handgun exposed him to a felony arrest, as Aleman had previously been convicted of several felony offenses that made it a felony for him to even possess a handgun. This, combined with additional narcotics later found in Aleman's possession, may well have influenced Aleman's decision to flee from Officer Peterson. Toxicology reports obtained from the coroner's office also indicated a high level of methamphetamine present in Aleman's blood, which may have also played a role in Aleman's decision-making.

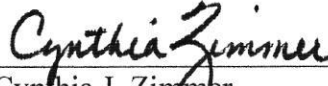
As Officer Peterson chased Aleman, he went through a progression of attempts to gain compliance without the use of deadly force. Beginning with verbal commands, Officer Peterson repeatedly commanded Aleman to stop. When unsuccessful, Officer Peterson drew his taser and further made clear to Aleman that it would be used if Aleman did not stop. Before the taser could be deployed, however, Aleman turned and used deadly force against Officer Peterson by firing two shots from his 9mm handgun. These shots were fired at extremely close range. Officer Peterson narrowly avoided being shot by Aleman by evading into the bushes. Within seconds, Officer Peterson reemerged and began firing at Aleman, who continued to possess the firearm and who had shown no signs of surrendering without further violence.

With these facts, Officer Peterson actually and reasonably believed that Aleman posed an imminent threat of death or bodily injury as required before deadly force may be employed under the law. Aleman's choice to distance himself from Peterson by taking steps southbound, potentially in an effort to seek a position of advantage, did nothing to dissipate that imminent threat. Aleman, still armed, had already fired two shots at point-blank range in the immediate direction of Officer Peterson. Having been shot at twice, the law imposed no duty on Officer Peterson to respond with less-than deadly force, to withdraw, or otherwise permit Aleman to escape or reach a more advantageous position.

Conclusion

Based upon a review of the evidence submitted by the Bakersfield Police Department, Officer Peterson responded reasonably in self-defense to defend against the imminent threat of death or serious bodily injury posed by Aleman's actions. There is no state criminal liability for the use of deadly force under the circumstances of this case and Officer Peterson's use of deadly force is legally justified.

Sincerely,



Cynthia J. Zimmer
Kern County District Attorney