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July 22, 2019

Chief Lyle Martin
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

Re: Fatal shooting of Rogelio Landa on April 17, 2017 by BPD Officer Spencer Carlson at Hudson Drive; BPD Case #17-75095

Dear Chief Martin,

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

Summary

Rogelio Landa and Andrew Crotwell committed two armed robberies on April 17, 2017. Crotwell used a BB gun without an orange tip, while Landa used a loaded revolver. Landa pointed the revolver at three different people during the two robberies. He put the gun against the neck of the victim during the second robbery. When officers attempted to apprehend him, Landa led them on a high-speed pursuit that ended in a collision. Landa and Crotwell ran from the scene in different directions in a residential neighborhood. Officer Carlson ordered Landa at gunpoint to stop, but Landa did not comply. Fearing Landa to be an armed, dangerous, fleeing felon, Officer Carlson fired twice at Landa. The first shot missed, but the second shot struck Landa in the head killing him.

Legal Principles and Analysis

According to Penal Code section 196, a homicide by a public officer is justified when committed in arresting a person charged with a felony who is fleeing or resisting arrest. Case law has narrowed this rule to felonies which threaten death or serious bodily harm. Landa had just

robbed two different stores with three different victims, all at gunpoint. Landa also led officers on a high-speed pursuit through a residential neighborhood and then ran towards houses. Officer Carlson feared Landa would harm civilians in the area or take someone hostage. Because Landa had threatened to cause death or serious bodily harm, Officer Spencer was allowed to use deadly force to arrest a dangerous, fleeing felon.

Landa was not actually armed with his loaded revolver at the time of the shooting. Just prior to crashing his vehicle he told a passenger Anita Carvajal to throw it out of the vehicle. He gave it to her and she did.¹ The pursuit was at night and Landa's reckless driving had kicked up considerable dirt in the air making it difficult for the officers to see his vehicle as they pursued him. They slowed down until they could see better and lost sight of Landa for a short time when the gun was thrown. The officers were not in a position to see the gun thrown from the vehicle.

Due to it being dark out, Officer Carlson could not see if Landa had anything in his hands or not when Landa ran from the vehicle. The fact that Landa turned out to be unarmed at the time of the shooting does not make the shooting unreasonable. This is because the appearance of danger is all that is necessary, actual danger is not.² Officer Carlson had reason to believe that Landa was armed with a firearm, and he was not in a position to see that Landa had disarmed himself just moments earlier. The United States Supreme Court teaches in *Graham* that you "cannot consider evidence of which the officers were unaware."³

Conclusion

Based upon a review of the evidence, there is no state criminal liability for Officer Spencer's use of deadly force under the circumstances of this case. He was authorized to use deadly force to apprehend a dangerous, fleeing felon under Penal Code section 196.

Sincerely,



Cynthia J. Zimmer
District Attorney

¹ Anita Carvajal was convicted of Felony Accessory (Penal Code section 32) in case BF167860B on 12/5/18 and given probation. Andrew Crotwell was convicted of three counts of Felony Robbery (PC 211), and misdemeanor Resisting Arrest (PC 148). He was sentenced to 8 years prison on 4/23/19 in case BF167860A.

² *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.

³ *Hayes v. County of San Diego* (9th Cir. 2013) 736 F.3d 1223, 1233, *Glenn v. Washington Cnty.* (9th Cir. 2011) 673 F.3d 864, 873 n.8.