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August 7, 2018

**MEDIA ADVISORY  
OFFICER INVOLVED SHOOTING REVIEW**

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**FOR IMMEDIATE RELEASE**

Approved by

**Officers:**  
Bakersfield Police Officer Matthew Johnson  
Bakersfield Police Officer Joshua Deutinger

**Location:**  
600 Block Pacheco, Bakersfield

**Investigating Agency:**  
Bakersfield Police Department

**FACTS:**  
On August 30, 2017, the Bakersfield Police Department received a 911 call from Elizabeth Lopez of a fight between her seventeen-year-old son, and her twenty-two-year-old nephew Issac Cervantes. In the 911 call Lopez stated the fight involved a gun, however, when Officers Deutinger and Johnson arrived at the residence on Pacheco Road, Lopez changed her story and said there was no gun. Ms. Lopez asked the officers to come inside her home and speak to her nephew, Issac Cervantes.

Cervantes was inside the house, along with two of Lopez's children. The officers wanted to confirm Cervantes did not have a gun before speaking to him. Cervantes refused to allow the officers to pat him down. After several failed verbal attempts to get Cervantes to comply, the officers attempted to take control of Cervantes' arms to search him by force. A struggle ensued as Cervantes resisted. Officer Johnson went down to the ground with Cervantes.

While on the ground with Officer Johnson, Cervantes pulled a firearm from his waistband and shot at both officers with a .45 caliber handgun. Both officers suffered serious injuries. Officer Deutinger suffered gunshot wounds to his arm and neck. He also received a laceration from a bullet that grazed his face. Officer Johnson was struck in the arm and chest. Johnson's vest provided protection to his chest, but he was unable to use his arm after a bullet entered his bicep.

Officer Deutinger did not return fire because Johnson was still too close to Cervantes. Officer Johnson pushed away from Cervantes and returned gunfire with his 9mm handgun. Officer Johnson fired a total of twenty-three times. Cervantes fired seven times, but the seventh casing jammed in the ejection port of his gun. During the shootout, Cervantes and Officer Johnson were roughly three to five feet apart with nothing between them. Johnson reloaded his firearm with one hand after losing the use of his arm that had been shot. Johnson was able to end the confrontation by shooting Cervantes in the head. Cervantes was declared dead at the scene.

Lopez and her seventeen-year old son were standing behind a couch when the shooting occurred. They ducked down for cover but also claim to have seen portions of the shooting. Both denied seeing Cervantes with a gun during the shooting. Both denied seeing Cervantes shoot at all during the incident. Lopez insisted that Cervantes did not shoot and that the officers' injuries were from friendly fire. However, a .45 caliber Glock handgun was found roughly four feet from Cervantes at the scene. The .45 caliber handgun was purchased one month earlier and registered to Cervantes. Investigators learned from Lopez's nine-year-old daughter that about half an hour prior to the officers arriving, Cervantes had been showing the gun to her and her friends. Lopez's seventeen-year-old son admitted that Cervantes had brandished a gun at him during a fight between them that had led to Lopez calling 911. During the investigation, detectives seized a text message from Elizabeth Lopez's cell phone from the evening of the incident. It read, "Gosh my nephew is going nuts here he is high and has a gun SMH."<sup>1</sup> Cervantes also had another loaded .45 caliber magazine in his pocket.

During surgery, a bullet was removed from Officer Johnson's arm. The bullet was analyzed by the Kern County Regional Crime Lab and determined to be a .45 caliber hollow-point bullet. Officer Deutinger's jaw was fractured and the inside of his throat lacerated by the gunshot wound to his neck. While waiting for an ambulance to arrive at the scene the bullet moved within his throat and he could not breathe. Deutinger coughed, and then spit the bullet out into the street. The bullet was analyzed by the Kern County Regional Crime Lab and found to be a .45 caliber hollow point bullet. The officers were only in possession of their department issued 9mm firearms and ammunition during the incident.

Both officers made full recoveries and have returned to work.

### **LEGAL ANALYSIS:**

Both officers had an obligation to investigate the initial call of a fight involving a firearm. They would have been derelict in their duty to leave the Lopez residence without ensuring the safety of the residents.<sup>2</sup> When

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<sup>1</sup> SMH is a common short hand text for "shaking my head."

<sup>2</sup> See *People v. Higgins* (1994) 26 Cal.App4th 247.

the officers arrived, Lopez denied a gun was present, but she invited the officers to talk to Cervantes and identified him as being involved in the fight. The order for Cervantes to stand and be searched both for officer safety and the safety of Lopez and her children was a lawful order.<sup>3</sup> This is based upon the information the officers had received from dispatch that there was a fight involving a gun.

Officer Deutinger explained to Cervantes the need to search him. He ordered Cervantes to comply several times. Cervantes had a duty to comply with the orders, but he failed to do so. The officers attempted to gain control of Cervantes' arms to keep him from reaching for a weapon while attempting to conduct their search. Cervantes physically resisted this effort, broke free, and managed to obtain his firearm. Cervantes was in violation of Penal Code section 148(a)(1) Delaying or Resisting a Peace Officer.

Any person who commits an assault with a firearm upon the person of a peace officer, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his duties is guilty of a felony. A person is also guilty of attempted murder if they 1) take at least one direct but ineffective step toward killing another person; and 2) intended to kill that person. Cervantes fired .45 caliber hollow point bullets seven times at the officers from close range. Both officers were struck multiple times and suffered serious injuries. Cervantes was in violation of Penal Code sections 245(d)(2) and 664/187 for Assault with a Firearm on a Peace Officer, and Attempted Murder of both Officers Johnson and Deutinger.

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.<sup>4</sup> Cervantes attempted to kill both of the officers. Both officers were reasonably in fear for their lives during the incident. Both officers believed they might die due to the injuries they sustained.

In this case Officer Johnson returned fire only after Cervantes shot at the officers first. Much of Officer Johnson's shooting occurred while he was still being shot at by Cervantes. He could see muzzle flashes from Cervantes' gun and felt the impact of gunfire as it struck him while he was shooting. Officer Johnson stated he was in fear for his life until he fired the final shots into Cervantes' head. An autopsy report shows that while Cervantes was shot fourteen times by Officer Johnson, damage to his organs was minimal and the bullets missed all major arteries. The pathologist opined that until the head shots occurred Cervantes "would still have been very much in the fight."

## **CONCLUSION**

Issac Cervantes attempted to kill both officers in this case. He shot Officer Johnson in the chest and arm. He shot Officer Deutinger in the arm and neck. Officer Johnson shot and killed Cervantes in self-defense. The shooting is justified.

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<sup>3</sup> See *Terry v. Ohio* (1968) 392 U.S. 1.

<sup>4</sup> Penal Code section 197; *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 1073, 1082; CALCRIM 505