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MEDIA ADVISORY
OFFICER INVOLVED SHOOTING REVIEW

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FOR IMMEDIATE RELEASE

Approved by _____

Officer:

Bakersfield Police Department Officer Danni Melendez

Investigating Agency:

Bakersfield Police Department

Location:

800 Block of South Haley Street, Bakersfield

FACTS:

On December 4, 2015, Jeriel Fite was involved in a drive-by shooting that left a victim with several gunshot wounds to his leg. Shortly thereafter, BPD Officers Frank McIntyre and Danni Melendez found a vehicle matching the description of the shooter's car. With Fite driving, a vehicle pursuit ensued. The car eventually stopped in a dirt yard creating a cloud of dust in the air. Three subjects ran from the car. The two officers pursued Fite on foot. While being pursued, Fite ignored orders to stop. Once the officers caught up to him Fite refused orders to show his hands. Officer McIntyre deployed his Taser but it was ineffective. It was dark, and Fite turned and faced Officer Melendez. He aggressively approached Officer Melendez with his hand concealed from view. Officer Melendez, believing Fite to be armed with a firearm, and in fear for his life, fired three times until Fite fell. Fite was shot once in his left leg. The injury was not life threatening.

Officers located a 9mm semi-automatic handgun on the ground after Fite ran from the car. Inside the car were two spent 9mm casings. This firearm and the two casings matched casings located at the scene of the drive-by shooting. The gun also matched a fired bullet located inside of the victim's car.

On December 13, 2017, Fite entered a no contest plea to a felony violation of Attempted Murder (for the drive-by shooting), and a misdemeanor violation of Delaying or Obstructing a Peace Officer. On March 8, 2018, Fite was sentenced to 19 years in prison.

LEGAL ANALYSIS:

An officer who has a reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance.[1] California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury.[2] An officer who uses deadly force must actually believe that the force is necessary. The appearance of danger is all that is necessary; actual danger is not.[3] The law does not impose a duty to use less lethal options.[4]

When analyzing the reasonableness of the force, careful attention must be paid to the facts and circumstances of each particular case, "including [1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officer or others, and [3] whether he is actively resisting arrest or attempting to evade arrest."[5]

As to the first factor, this case involves a highly significant, violent crime. Fite committed attempted murder when he "unloaded" on a defenseless victim with a firearm. Eight bullet strikes were found in the side of the victim's car. The victim suffered two through and though wounds to his leg and a broken patella.

In regard to the second factor—whether Fite was an immediate threat to the officers or others—an argument can be made that Fite was not a threat to Officer Melendez because it turns out the firearm used in the drive-by shooting was left outside the car when Fite ran. However, the appearance of danger is all that is necessary; actual danger is not.[6] Furthermore, *Graham* teaches that one "cannot consider evidence of which the officers were unaware."[7] Officer Melendez was unaware that Fite no longer had the gun when he made the decision to shoot. It was reasonable for Officer Melendez to believe that Fite was still armed. Although the firearm was dropped outside the vehicle, Melendez was in no position to see a black gun hidden inside a black ski mask laying on the ground at night.

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1 *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386.
2 CALCRIM 3470
3 *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639
4 *People v. Collins* (1961) 189 Cal.App.2d 575, 589
5 *Hayes* at 1232; *citing Graham v. Connor* at 396.
6 *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.
7 *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.

Furthermore, there was a cloud of dirt in the air. Melendez could not see the occupants of the car initially when using the patrol car's spotlight. Also, Fite never said or did anything to indicate he did not have the gun. To the contrary, Fite had no fear when he aggressively approached Officer Melendez who had his firearm drawn. It is a reasonable inference for Officer Melendez to believe Fite was still armed and willing to use his weapon. This inference is even more reasonable when considering that Fite had just shot someone. Finally, Officer Melendez's imminent fear came from the fact that Fite had his hand concealed within his clothing in such a way that Melendez believed he was reaching for a firearm as Fite approached him. Melendez stated, "I was honestly scared, and thought he was going to start dumping rounds at me."

As to the third factor, Fite actively resisted arrest for this crime. He drove dangerously on city streets at speeds up to 80mph and nearly caused several collisions. He failed to yield to the officers who had sirens and lights activated on their marked patrol car. Ultimately, Fite crashed the car in a backyard. Even then he continued to resist arrest by fleeing on foot. He failed to yield to verbal commands to stop. He failed to yield to Officer McIntyre's Taser deployment. He failed to yield to Officer Melendez drawing a firearm, as well as further verbal commands. He never stopped resisting until he was shot with a firearm. The factors weigh in favor of Officer Melendez' decision to use deadly force.

Officer Melendez also limited the use of deadly force he used on Fite. He did not "unload" on Fite the way Fite did in the drive-by shooting. Instead, Officer Melendez only fired three times. The first shot missed. One of the next two shots hit Fite. Once he fell, Officer Melendez stopped firing. Melendez aimed for his lower body. He fired downward towards the ground to avoid collateral damage to anyone who might be in the apartments behind Fite.

CONCLUSION

Officer Melendez chose to use the force described above 1) to react to the need to apprehend a person who had just committed an attempted murder; 2) to overcome active, dangerous, and ongoing resistance by Fite; and 3) to react to his perception that Fite was going to immediately harm him with a weapon if he did not shoot him first. The shooting is legally justified.