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MEDIA ADVISORY
OFFICER INVOLVED SHOOTING REVIEW

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FOR IMMEDIATE RELEASE

Approved by

Officer:

Shafter Police Officer Eric Diaz

Investigating Agency:

Bureau of Investigation, Kern County District Attorney's Office

FACTS:

On September 21, 2016, at approximately 1:35 a.m., a worker at the Fastrip at 105 East Lerdo Highway in Shafter called the Shafter Police Department (SPD) to report a naked man outside their store washing himself with a squeegee. The man was later identified as Oscar Ponce.

SPD Officer Maira Puente was the first police officer to arrive at Fastrip. She reported that when she arrived, Mr. Ponce had his pants back on but he also had several knives on his waistband. She ordered Ponce in Spanish and English to show his hands, but he did not comply with her commands.

When SPD Sergeant Gustavo Olvera arrived at the scene, Ponce had already approached his vehicle and was getting into the driver's seat. Sergeant Olvera tried to physically stop Ponce from entering the vehicle, but backed away when he saw the knives in Ponce's waistband. The police officers tried to prevent Ponce from driving off but he "peeled out" while Officer Puente's hand was on the driver's door.

At this point, Officer Puente drew her handgun but did not shoot as SPD Officer Eric Diaz had arrived and was in her line of fire. Officer Puente feared Ponce was going to hit Officer Diaz with his vehicle. As Ponce's vehicle accelerated it collided with Officer Diaz's patrol car.

When Officer Diaz arrived, he heard the other officers say Ponce had a knife. Officer Diaz parked in front of Ponce's vehicle and got out of his patrol car. He drew his firearm and approached Ponce's vehicle on foot. Officer Diaz said he saw Ponce look at him and then accelerate towards him. Officer Diaz, fearing he was going to be struck by the vehicle, shot at Ponce and continued firing as he felt Ponce remained a threat to himself and others in the area. Officer Diaz fired his handgun a total of eight times.

After striking Officer Diaz's patrol car, Ponce continued driving until his car struck a light pole in the parking lot. Ponce got out of the vehicle and followed commands to get on his knees and then on to his stomach prior to being taken into custody. Ponce was shot one time in the hand.

Ponce was described by his family as paranoid, threatening to family members, and carrying knives for his protection. Ponce tested positive for methamphetamine. On October 2, 2017, Ponce was convicted of Penal Code section 245(c), assault with a deadly weapon, not a firearm, on a peace officer. He was sentenced on February 7, 2018, to 3 years in prison.

LEGAL ANALYSIS:

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, Penal Code section 197; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; CALCRIM 505. There is no duty to retreat from the danger. *People v. Hughes* (1951) 107 Cal.App.2d 487, 493; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22; CALCRIM 505.

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of others. Additionally, an officer who has 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. *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; Penal Code section 196.

In deciding whether an officer who fired his or her weapon did so lawfully, one must consider what a reasonable person would have done in a similar situation with similar knowledge and experience. One must decide whether the officers' beliefs and action were objectively reasonable under all of 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. In order for the use of deadly force to be "objectively reasonable," the officers must have probable cause to believe that the suspect posed a significant threat of death or serious physical injury to an officer or others.

It had been reported to SPD that Ponce had stripped naked and was washing himself in the parking lot. When Officer Puente arrived, she could see he was armed with multiple knives. Ponce ignored her commands and got into his vehicle and accelerated while Officer Puente had a grip on the driver's door. Ponce accelerated towards Officer Diaz and struck Officer Diaz's patrol car. After being told Ponce was armed with a knife, seeing Ponce look and then accelerate towards him, Officer Diaz stated he feared for his life and he fired his handgun at Ponce until Ponce's vehicle struck the light pole and came to a stop.

CONCLUSION

Officer Diaz acted with the reasonable belief that Ponce was trying to run him over and was a danger to Officer Diaz. Based on that, Officer Diaz believed deadly force was necessary.

It was the officers' duty to respond to the call for assistance from the Fastrip employee. It was their duty to investigate Mr. Ponce's bizarre behavior. When Ponce, while armed with numerous knives, accelerated towards Officer Diaz, Officer Diaz had to make a split-second decision to protect himself and others. He acted reasonably in self-defense and therefore Officer Diaz's shooting of Ponce is justified.