PRESS CONFERENCE-FEBRUARY 2, 2018
OIS REVIEW-DECEMBER 12, 2016 ON SILVER BIRCH, BAKERSFIELD

On December 12, 2016, a number of tragic circumstances occurred that ultimately resulted in the death of Francisco Serna. Mr. Serna was 73 years old and had been diagnosed with dementia approximately 18 months earlier. During the evening of December 11, 2016, Mr. Serna's wife, Rubia Serna, was watching television with her husband. At approximately midnight she told him to put on his pajamas. He refused and subsequently she fell asleep. She was later awakened by what she described as loud popping noises.

Mr. Serna wandered out of his home at approximately 12:30 a.m. on the morning of December 12th. According to Rubia Serna, Francisco Serna did not usually go out after dark, however he had wandered out of the house two nights earlier at 2:00 a.m. On December 12th, Mr. Serna approached Serena Frausto who resided at 7912 Silver Birch Avenue. She had gotten a ride home from a co-worker and was just being dropped off when Serna approached her as she got out of the passenger side door of the vehicle. He asked her in English why she was in the neighborhood, who her mother was, and demanded entry into the vehicle so he could search it. The driver of the vehicle told Ms. Frausto not to let Serna in. Mr. Serna reached into his shirt and removed a dark object that Ms. Frausto later told police was a small pistol.

After he searched the car, Mr. Serna walked across the street to his house located at 7913 Silver Birch Avenue. Ms. Frausto ran into her house and told her 15 year old son to call the police. Mr. Serna then came back to Ms. Frausto's house and her fiancé, Charles Lyons, went to the door and asked Mr. Serna what was going on. Serna, who appeared to have something in his hand, asked Lyons if he lived there. Lyons said he had lived there for 25 years and then shut the door and Serna walked towards his house. According to Mr. Lyons, Ms. Frausto was hysterical after her encounter with Mr. Serna.

Ms. Frausto, described Mr. Serna as wearing sunglasses and never having seen him before that evening. Ms. Frausto, when interviewed, said all she had seen of the gun was the handle, but said she could identify the firearm if she saw it again. She described Mr. Serna gripping the handle the way someone would hold a firearm. In other words, she assumed he had a gun and that is what she told the officers who responded. The 911 call made by Ms. Frausto's son, at his mother's direction, stated, "There was a man outside with a gun." Approximately two minutes later the broadcast stated a Hispanic male in his late 60's, wearing a brown jacket, was armed with a revolver.

The first officers to respond were Bakersfield Police Officer Reagan Selman and Bakersfield Police Officer Victoria Johns. As they arrived at the residence, an additional broadcast advised that the armed subject was no longer outside. They contacted Ms. Frausto and she told them that the man, later identified as Mr. Serna, had a weapon and that he was at his house. Her exact words during this conversation were that Mr. Serna had "pulled out a gun." Mr. Lyons told them that the man who had come to their door had his hand concealed inside his jacket and although he did not see a firearm, believed the individual was in possession of a firearm. Approximately
five minutes later Mr. Lyons saw Mr. Serna coming out of his house and Lyons pointed at Serna and told the officers, including Officer Selman, that was the guy. Mr. Serna was wearing the same clothing Frausto and Lyons had previously described.

Mr. Serna started walking toward the group of officers with his hands concealed from view. His left hand was down at his left side and was not visible, his right hand was tucked inside the front left portion of his bulky jacket.

At that time several officers, including Officer Selman, shouted "police, show us your hands." Several officers shouted "stop," but Mr. Serna did not stop walking and he did not show his hands. The officers attempted to take cover at various locations, but Officer Selman and Officer Johns were fully exposed on the passenger side of an SUV that was parked in the driveway of 7912 Silver Birch. Officer Johns moved to the front of the SUV, and Officer Selman attempted to conceal himself behind a couch in the driveway. As Mr. Serna reached the rear of the SUV, in line with the rear bumper, Officer Selman fired 7 successive shots at Mr. Serna, 5 of which hit Mr. Serna. At that point Mr. Serna fell down, mortally wounded.

In deciding whether an officer who fired his 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 officer's beliefs and actions were objectively reasonable under all of the circumstances known to him as they appeared at the time. The United States Supreme Court has stated that 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. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight. Finally, 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. The appearance of danger is all that is necessary; actual danger is not.

When we evaluate Officer Selman's use of deadly force, we approach the analysis by asking the questions, what did he know, and were his actions objectively reasonable? BPD dispatch reported an older Hispanic male was armed with a revolver and possibly lived or was a visitor across the street. Officer Selman's interview with the reporting party, Ms. Frausto, revealed Mr. Serna had approached her with a dark brown or black item she believed was a firearm, and used her hands to motion what Serna had done. Likewise, Mr. Lyons told Officer Selman that Serna had his hand concealed inside his jacket and he believed he was in possession of a firearm.

When officers observed an individual, matching the description that Ms. Frausto and Mr. Lyons had given, walking toward them from the 7913 Silver Birch residence, and Ms. Frausto confirmed that was the person she had seen, Officer Selman immediately drew his firearm, identified himself as a police officer, and yelled at Mr. Serna approximately 8 times to stop and show his hands. A least two other officers shouted orders to Serna to stop, take his hands out of his jacket, show his hands. Mr. Serna failed to comply with these orders and continued to walk towards the officers.

Mr. Serna had a legal duty to comply with lawful orders given by multiple uniformed officers on scene. All indications were that Mr. Serna spoke and understood English. Each of the six officers present that evening perceived a threat from Mr. Serna. The appearance of danger is all that is necessary under the law. Officer Selman's location in the driveway behind the couch placed him in the most vulnerable position in relation to the other officers at the scene. Given the information known to Officer Selman, it is my conclusion that Officer Selman acted reasonably under the circumstances that were known to him at the time of the shooting. I find Officer Selman was legally justified in shooting Francisco Serna in self-defense.

LISA S. GREEN
District Attorney, Kern County