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September 28, 2018

**MEDIA ADVISORY
IN CUSTODY DEATH REVIEW**

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FOR IMMEDIATE RELEASE

Approved by _____

Officer:

Bakersfield Police Department Officer Timothy McIrvin and Zachary Burdick

Investigating Agency:

Bakersfield Police Department

Location:

1821 Lacey Street

FACTS:

On October 2, 2016, at about 11:54 p.m., Bakersfield Police Department officers were dispatched to 1821 Lacey Street in response to a 9-1-1 call about a disturbance. The caller reported that Jose Vilorio, 62, was armed with a machete. During the disturbance Vilorio had brandished the machete at the other occupants of the residence and then swung it at a female and threatened to “chop her head off.”

The reporting parties had exited the residence and met the responding officers in the front yard. The officers, including Officer Timothy McIrvin, entered the home and found Vilorio seated on a couch with the machete within arms’ reach. For the safety of all, the officers ordered Vilorio to get off the couch and move away from the machete. Vilorio did not follow the officers’ commands and instead began to reach for the machete. Two officers, including Officer McIrvin, attempted to stop Vilorio and a violent struggle ensued. As Vilorio began to overpower the officers, Officer McIrvin applied a carotid control hold and Vilorio lost consciousness. The officers placed Vilorio into a recovery position and summoned medical aid. While awaiting the ambulance the officers rendered medical aid. Following treatment by emergency medical personal, Vilorio was transported to a local hospital. Approximately two days later Vilorio died.

LEGAL ANALYSIS:

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. California law permits the use of deadly force if the officer actually and reasonable believed he was in imminent danger of death or great bodily injury. 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. The law does not impose a duty to use less lethal options.

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."

As to the first factor, this case involved a violent crime. Vilorio threatened the victim, brandished a large machete, and committed an assault with a deadly weapon on an unarmed woman, all while her young child was inside of the residence. This happened after he had committed a theft of her personal property.

The second factor, whether Vilorio was an immediate threat to the officers or others, is resolved by the large machete located within grabbing distance on the couch behind Vilorio. The machete was seen by Officer McIrvin. McIrvin attempted to diffuse the situation by getting Vilorio to rise and move away from the machete. When Vilorio would not do as instructed, Officer McIrvin moved towards Vilorio and placed one hand on him attempting to guide him away. Vilorio began reaching for the machete and a struggle ensued. Although the appearance of danger is all that is necessary, in this instance given the location of the machete and the physical struggle, the officers were in actual danger.

As to the last factor, Vilorio was actively resisting arrest. He was pushing Officer McIrvin across the room and overpowering him. Although his partner was able to gain control of one arm, McIrvin was being overpowered during a violent struggle by Vilorio. Vilorio did not stop violently resisting until he had been placed in a carotid control hold by Officer McIrvin. Officer McIrvin was trained in the carotid control hold and employed it according to proper procedure and only for that period of time necessary to gain compliance by Vilorio. The absence of fractures to the hyoid bone or thyroid cartilage and external injuries to the neck, support the conclusion that the hold was employed properly.

CONCLUSION:

Officer McIrvin employed the force described above to overcome dangerous, immediate and ongoing physical resistance by a subject who was overpowering him. Additionally, a deadly weapon, a machete, was within reach of the suspect during much of the struggle. In an attempt to diffuse the situation, Officer McIrvin first gave verbal commands and then gently touched Vilorio's arm in order to attempt to guide him away from the machete, an immediate, deadly threat. Mr. Vilorio's violent response while within reach of the machete that he had used earlier against an unarmed female had turned the contact into a physical confrontation. The actions taken by Officer McIrvin were reasonable due to the actual deadly threat of harm or death faced by him and Officer Burdick. Further, based on the information known to the officers they had a legal duty to investigate what had taken place earlier that evening. The force used by the officer was legally justified.

