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December 10, 2019

Chief Lyle Martin  
Bakersfield Police Department  
1601 Truxtun Avenue  
Bakersfield, CA 93301

**Re: Officer-Involved Shooting of Augustus Crawford by BPD Officer Warren Martin  
On November 4, 2017; Planz Road; BPD case 17-238090 / 17-237980**

Dear Chief Martin,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed reports and other materials submitted by your agency regarding the shooting noted above. The OIS Committee reviews cases for criminal liability under state law. The OIS Committee has completed its review. The findings are noted below.

***Summary***

Officer Warren Martin had probable cause to believe that Augustus ("A.J.") Crawford shot and nearly killed a man during a marijuana robbery at 710 R Street. Officer Martin saw blood at the crime scene where the shooting had occurred. Officer Martin was advised of wiretap evidence that Crawford believed he had shot and killed the victim. Officer Martin had prior contacts with Crawford and knew he was a West Side Crip gang member. Officer Martin was tasked with pulling over a vehicle that surveillance officers advised Crawford was in. Officer Martin was further advised that Crawford was currently armed with a firearm. During the traffic stop on Planz Road, Crawford exited the car and ran from police. As he turned the corner he threw his loaded firearm into a backyard. Pursuing officers, including Officer Martin, were not in a position to see Crawford throw the gun. Crawford entered a dark, dirt lot with Officer Martin and Garcia running after him. Officer Martin saw Crawford make motions towards his waistband as he looked back at Officer Garcia. Officer Martin thought Crawford was going to shoot Officer Garcia. Officer Martin fired his service weapon at Crawford. Crawford was struck and fell to the ground. While on the ground Crawford was given verbal commands to show his hands but he refused. Crawford rolled over from his stomach with his hand in his waistband and

Martin fired again. Crawford then said, “Ok you got me,” and moved his hand away from his waistband. Crawford succumbed to his injuries while being treated at Kern Medical.

### ***Legal Principles and Analysis***

#### **Deadly Force to Apprehend a Fleeing Felon**

According to Penal Code section 196, a homicide by a public officer is justified when committed in arresting a person charged with a felony who is fleeing or resisting arrest. Case law has narrowed this rule to felonies which threaten death or serious bodily harm. Crawford had just robbed a marijuana dealer, shooting him four times and leaving the scene believing he had killed the man. Crawford fits squarely within the rule under Penal Code section 196, allowing for deadly force to arrest a dangerous, fleeing felon.

The first shooting stopped Crawford from fleeing any further from the officers, however it did not stop him from resisting. Crawford continued to keep his right hand under his body near his waist band after the first shooting. Both Officers Garcia and Martin ordered Crawford to show his other hand, but he would not. Believing Crawford to still be armed and dangerous, his resistance to the officers’ commands caused a fear that he would shoot them. Officer Martin recalls saying, “A.J. put your arms out...” “A.J. I need to see both of your hands.” “A.J., if you have a weapon, don’t grab it.” As Crawford continued to make movements with his right hand near his waistband and was lifting his head up looking around, Martin told him to put both of his hands out, “or you’re going to get shot again if you keep doing that.” This is important because the United States Supreme Court held that deadly force when apprehending a dangerous fleeing felon is considered more reasonable when, if feasible, a warning has been given prior to using that deadly force.<sup>1</sup>

Crawford still did not comply despite this warning. Instead, Crawford quickly moved his lower legs and rolled over onto his left side, tucking his left arm in and quickly exposing his abdomen area with his hand still in the waistband area. Martin believed he was going to retrieve a weapon and shoot at him and Officer Garcia. Martin fired at Crawford striking him. After the second shooting, Crawford complied. He rolled onto his back, put his hands up and said, “Okay, you got me.”

In *Plumhoff v. Rickard*, a fleeing felon was shot at fifteen times in two separate shootings, and the United States Supreme Court found the officers’ actions reasonable. “It stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.”<sup>2</sup> In the present case, Officer Martin fired three times during the first shooting, and six times during the second shooting. Crawford received eight gunshot wounds. Officer Martin stopped firing when Crawford

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<sup>1</sup> *Tennessee v. Garner* (1985) 471 U.S. 1, 11.

<sup>2</sup> *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012, 2022

complied with orders and showed both of his hands. From Officer Martin’s perspective, this was the first opportunity officers could safely arrest him for attempted murder.

### **Deadly Force when Crawford was Unarmed**

The fact that Crawford was not armed at the time of the shootings by Officer Martin does not make the two shootings unreasonable. This is because the appearance of danger is all that is necessary, actual danger is not.<sup>3</sup> As noted above, Officer Martin had reason to believe that Crawford was armed. Crawford can be seen throwing the firearm in a surveillance video just prior to the officers coming around the corner. The officers were not in a position to see it thrown. They did not know he had disarmed himself just moments earlier. The United States Supreme Court teaches in *Graham* that you “cannot consider evidence of which the officers were unaware.”<sup>4</sup>

### **Split-Second Decisions**

A study entitled, “The Reasonableness of Reaction Time,” conducted numerous simulations where officers knew they were responding to a call of a person with a firearm and were looking for a firearm when they made contact. A split-second decision had to be made based upon the reaction or lack thereof by the suspect. Even though the officers already had their guns drawn and pointed at the suspects—they were still shot at and hit by half of the suspects where the suspects attempted to shoot them. The authors concluded that “even when a police officer has his or her gun aimed at a suspect and the suspect is not aiming at the police officer, the police officer is still in extreme danger.”<sup>5</sup>

In the present case, Officer Martin saw that Crawford already had his hand near his waistband as he looked back at Officer Garcia. If Crawford was in fact reaching for a firearm, Officer Garcia would have already been in extreme danger given the time it takes to commit an assault by Crawford versus the time for officers to react to it as noted above. Officer Martin had to make a split-second decision based on what he knew at the time and saw happening. He was in a similar situation prior to the second shooting. The Supreme Court has acknowledged the difficulty described above in making the split-second decision on whether to shoot. “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.”<sup>6</sup>

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<sup>3</sup> *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.

<sup>4</sup> *Hayes v. County of San Diego* (9<sup>th</sup> Cir. 2013) 736 F.3d 1223, 1233, *Glenn v. Washington Cnty.* (9<sup>th</sup> Cir. 2011) 673 F.3d 864, 873 n.8.


<sup>5</sup> “Reasonableness and Reaction Time,” by Professor J. Pete Blair, published in *Police Quarterly* 2011.

<sup>6</sup> *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

## CONCLUSION

The Kern County District Attorney's Office conducts reviews of Officer-Involved Shootings for criminal liability. Based upon a review of the evidence, the first use of deadly force is authorized under Penal Code section 196 to apprehend a dangerous, fleeing felon, and to act in defense of a reasonably perceived threat to Officer Garcia. The second shooting is also a response to a reasonably perceived threat requiring self-defense, and defense of Officer Garcia. There is no criminal liability for Officer Martin's two uses of deadly force as both shootings are legally justified.

Sincerely,

  
**Cynthia J. Zimmer**  
**District Attorney**