



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KERN

CIVIC CENTER JUSTICE BUILDING
1215 TRUXTUN AVENUE
BAKERSFIELD, CALIFORNIA 93301
(661) 868-2340, FAX: (661) 868-2700

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

KENNETH M. RUSSELL
ASSISTANT DISTRICT ATTORNEY

January 20, 2026

Chief of Police Greg Terry
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

**Re: BPD Officer-Involved Shooting of Esmeraldo Vivanco on January 18, 2024
Bakersfield Police Department Officers Sergeant Keith Cason, Officer Miguel Flores,
Officer Ian Baker, Officer Jose Garcia, Officer Charles Jordan, Officer Felipe Maduena,
and Officer Zachary Ward
1301 Chester Avenue Bakersfield, CA
Documented in BPD Report 2024-12998**

Dear Chief Terry,

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 Officer-Involved Shooting Committee reviews cases for criminal liability under state law. The findings of the Officer-Involved Shooting Committee are noted below.

Summary

On January 18, 2024, at approximately 02:23 hours the Bakersfield Police Department (BPD) received an alert from ShotSpotter about shots fired near 1301 Chester Avenue. Officers Kidd and Garcia responded at 02:28 and contacted a witness who was on a bicycle near the southwest corner of 13th and Chester. The witness said he heard multiple gunshots near and to the north. After additional officers arrived a white pickup truck was observed parked facing southbound on Chester. Officers parked their patrol cars to create cover south and east of the truck. Officers attempted to approach the truck and contact Esmeraldo Martinez Vivanco who was the solo occupant and in the driver's seat of the truck. When officers shined a light in the truck he yelled at officers in Spanish and officers saw him manipulating a rifle. Upon seeing the rifle officers retreated, took cover, and broadcast over the radio

the suspect was armed with a rifle.

Officers called out, in English and Spanish, for Esmeraldo Martinez Vivanco to surrender, or he would be killed, and he responded in Spanish, "kill me." Esmeraldo Martinez Vivanco started shooting his rifle at officers at 02:34 and he fired at least eight rounds. According to ShotSpotter over 40 rounds were exchanged between officers and Esmeraldo Martinez Vivanco. Esmeraldo Martinez Vivanco received multiple gunshot wounds but was still moving and alert inside the truck. Officers Baker, Garcia, Jordan, Maduena, and Ward discharged firearms during this exchange of gunfire. There was a pause in the shooting and Officer Flores, a Spanish speaking officer, took a position behind a patrol car but close to Esmeraldo Martinez Vivanco. Officer Flores ordered Esmeraldo Martinez Vivanco to surrender in Spanish multiple times, but he did not comply with orders. Officer Flores saw Esmeraldo Martinez Vivanco raise his rifle and Officer Flores reacted by discharging 4-5 rounds at Esmeraldo Martinez Vivanco, however, he was still moving and alert inside the truck after Officer Flores discharged his firearm. Officer Ward contacted a witness in a nearby parking garage who said he saw the guy in the truck with a grenade in his hand earlier. Sergeant Cason was positioned across the street between two businesses. At 02:48, when Esmeraldo Martinez Vivanco raised his rifle with his finger on the trigger Sergeant Cason fired one round striking and killing Vivanco. The threat to public safety lasted at least 25 minutes. When officers searched Vivanco's truck they located a rifle with a scope, twenty-seven spent shell casings, an extra ammunition clip.

Legal Principles and Analysis

A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense. If a person knows, or reasonably should know, that a peace officer is arresting or detaining him, the person must not use force or any weapon to resist an officer's use of reasonable force. It is a person's duty not to delay or resist a lawful attempt by an officer to arrest or detain. (Penal Code section 834a; CALCRIM 2670) In this case, Esmeraldo Martinez Vivanco knew or reasonably should have known that police officers were attempting to detain or arrest him as there were multiple officers near his truck, he responded orally to attempts to speak but he refused to exit his vehicle and he took the affirmative step of firing multiple rounds from his rifle at officers and raising his rifle on two other occasions. Thus, in this case officers were justified in using reasonable force to arrest or detain Esmeraldo Martinez Vivanco.

An officer with reasonable cause to believe a crime is committed or a person 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; *see also* Penal Code section 835a(b). An officer may use deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (CA Penal Code section 835(c)(1)(A)). When evaluating the use of deadly force, one must decide whether the officers' beliefs and actions were objectively reasonable under all 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. "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." (*Graham v. Connor*, supra at p. 396.) 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.

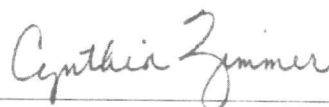
Officers Ian Baker, Jose Garcia, Charles Jordan, Felipe Maduena, and Zachary Ward discharged their duty weapons as a direct result of Esmeraldo Martinez Vivanco discharging his rifle in the direction of officers. Further, all the officers on scene were at risk of death or great bodily injury as well as members of the public on the street and inside nearby buildings because Esmeraldo Martinez Vivanco fired multiple rounds from a high-powered rifle. All the officers were justified to act in self-defense, defense of others, and protection of the public in discharging their firearms. Officer Miguel Flores attempted to convince Esmeraldo Martinez Vivanco to surrender himself after he had discharged his rifle at officers and after officers fired at him. However, Vivanco ignored Officer Flores' commands and raised his rifle towards Officer Flores. Officer Flores, having full knowledge that Esmeraldo Martinez Vivanco had already fired at officers, and had ignored his commands to surrender, and that they were located in a busy area was justified to act in self-defense, defense of others, and protection of the public, when he discharged his rifle at Esmeraldo Martinez Vivanco. Sergeant Cason observed Esmeraldo Martinez Vivanco raise his rifle. Sgt. Cason had knowledge that Esmeraldo Martinez Vivanco had previously fired his rifle at officers and had failed to yield to officers' commands to surrender and had observed his choice to aggressively confront law enforcement. Sgt. Cason acted under a reasonable belief that there was an imminent threat of death or serious bodily injury to all the officers in the area as well as the general public. Therefore, Sergeant Cason was justified by self-defense, defense of others, and protection of the public when he discharged his rifle.

Where potential dangerous, emergency conditions, or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. (*Brown v. Ransweiler* (2009), 171 Cal.App.4th 516 at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury. In this case, officers did not fire their duty weapons until after Esmeraldo Martinez Vivanco shot at officers and the officers that fired their weapons only acted to stop the threat created by Esmeraldo Martinez Vivanco. Officers only used the force necessary to defend against the imminent threat of death or serious bodily injury to the officers and the public.

Conclusion

The actions of Sergeant Keith Cason, Officer Miguel Flores, Officer Ian Baker, Officer Jose Garcia, Officer Charles Jordan, Officer Felipe Maduena, and Officer Zachary Ward on January 18, 2024, were legally justified as self-defense, protection of the public and defense of others under California State law. There is no state criminal liability for their use of deadly force under the circumstances of this case because the shooting is legally justified.

Sincerely,



Cynthia J. Zimmer
Kern County District Attorney