



OFFICE OF THE DISTRICT ATTORNEY
C O U N T Y O F K E R N

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

ANDREA S. KOHLER
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

August 11, 2021

Sheriff Donny Youngblood
Kern County Sheriff's Office
1350 Norris Road
Bakersfield, CA 93308

Re: Officer-Involved Shooting of Israel Lucas by Deputies Nichalous Evans and Ryan Godett on March 21, 2020 at Family Dollar (2343 Highway 58 Mojave CA). Case documented in 2020-00044596.

Dear Sheriff Youngblood,

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 Officer Involved Shooting Committee has completed its review. The findings are noted below.

Summary

On March 21, 2020, deputies responded to a call at the Family Dollar in Mojave, CA regarding Israel Lucas, who was refusing to leave, being verbally abusive to the staff, and causing a disruption at the store. When deputies arrived, they found Lucas in the nearby area and informed him that he could not return to the Family Dollar. They facilitated a conversation between the store manager and Lucas, in which the store manager explained to Lucas that he was not allowed back based on his disruptive conduct. Deputies told Lucas that if he were to return, they would have to arrest him for trespassing.

Lucas refused to comply and indicated that he did not intend to comply in the future, so deputies decided to arrest Lucas. As they touched his arm to arrest him, Lucas began violently fighting with the two deputies. During the fight, Lucas was swinging his fists at them, punching them in the head, and slamming both deputies into the walls and windows outside of the Family Dollar. Both deputies tried to maintain control of Lucas but were unsuccessful. They first tried verbal commands, then tried to handcuff Lucas, and finally tried to take Lucas to the ground. All their attempts failed, and Lucas continued to resist. An independent witness believed that Lucas must have been on illegal narcotics because of how he was able to overpower the deputies and how strongly he was able to resist their attempts to control him.

In the struggle, both Deputy Evans and Deputy Godett's batons fell to the ground and Lucas grabbed Deputy Evans' baton. Lucas swung the baton and struck Deputy Evans in the back. In an attempt to save

his own life, Deputy Evans tried to use pepper spray on Lucas, but it was ineffective to stop the attack. Lucas raised the baton over his head a second time, as if to swing at Deputy Evans with full force again. Deputy Godett was behind Lucas, who was facing Deputy Evans and about to strike. To save Deputy Evans, Deputy Godett fired two shots, which struck Lucas and killed him.

Legal Principles and Analysis

Lucas' actions demonstrated a clear threat to Deputy Evans' life. A baton used in the manner described above is a dangerous and deadly weapon. A deadly weapon is defined as an object or weapon that is used in a manner capable of causing or likely to cause great bodily injury or death.

In examining the baton as a dangerous weapon, one can compare it to a billy club, which has been criminalized under Penal Code 22210. This law falls under the statutes that establish who may possess and control deadly weapons. With the physical comparison between the billy club and the baton, it is only reasonable to conclude that the baton is a dangerous or deadly weapon. The department-issued baton that Lucas took from Deputy Evans in this case is a long, strong, solid piece of wood. In *People v. Canales* (1936) 12 Cal.App.2d 215, the Court explained that items described as a "straight, smooth piece of wood about the thickness of a pick handle, eighteen inches long" as well as a "a club 14 ¼ inches long, thicker at one end than the other, with nails driven into the larger end and covered with tape" both qualified as a "blackjack or billy". (*Id.* at p. 217.) The court stated: "The definition is purposely broad, for ... [the legislature] forbade ownership of any weapon of that class; the purpose being to outlaw instruments which are ordinarily used for criminal and unlawful purposes." (*Ibid.*) *People v. Mercer*, 42 Cal. App. 4th Supp. 1, 5 (Cal. App. Dep't Super. Ct. 1995).

Depending on how the baton is used, the law supports a finding that a baton is a deadly weapon. In *People v. Valasquez*, (Ct. App 1975) 53 Cal. App. 3d 547, 554–55, the Court made such a finding. The Court found that the Defendant in that case "initiated the bloody and potentially lethal battle in the process of resisting arrest, and his deliberate acts in resisting arrest and in assaulting Deputy Johnston caused Deputy Khardin to react by shooting to kill in the performance of his duty, as well as defense of Johnston." The Court specified that "Fists can be lethal weapons as well as batons and guns. The shooting of Rosalio was a reasonable and foreseeable response to the situation created by the intentional acts of respondent and Rosalio." (See *People v. Gilbert* 63 Cal.2d, 705.) *People v. Velasquez*, 53 Cal. App. 3d 547, 554–55 (Ct. App. 1975)

In fact, the Court in *Valasquez* (Ct. App 1975) 53 Cal. App. 3d 547, 554–55 examined a Deputy's use of force when a Defendant was assaulting Deputies with their own baton. As the Court examined the facts, it noted that the Defendant "indicated his intent not to cooperate by using profane and abusive words...he stated he had just been released from jail, that he did not intend to return, and that if he were to be arrested 'he was going to go the hard way'" *Id.* When officers tried to arrest the Defendant, he "swung around and struck [the officer] across the face." Deputy Khardin in *Valasquez* continued to struggle with the Defendant until the Defendant eventually "got the baton; Deputy Khardin was struck at least four times about the head with his own baton," causing him to lose consciousness and collapse. The Defendant and his brother turned to Deputy Johnson and began assaulting him with the baton. When Deputy Johnson appeared to no longer be moving, the Defendant and his brother tried to obtain Deputy Johnson's firearm. After repeated attempts to get them to stop, Deputy Khardin, who had regained consciousness, shot at the Defendant and his brother. Defendant's brother was shot and killed."

It is useful to compare the facts in this case to those in *Valasquez*. Like in *Valasquez*, Lucas had already demonstrated that he was not going to cooperate. He had already used profane and abusive words and told the deputies in no uncertain terms that he was not going to comply. In a similar escalation to *Valasquez*,

Lucas also swung around and struck deputies in the head multiple times. Ultimately, Lucas also picked up the baton that had fallen during the fight and used it against Deputy Evans. Thankfully, Lucas was not allowed to continue striking Deputy Evans until Deputy Evans fell unconscious, as the officer did in *Valasquez*, but the case law clearly recognizes the dangerous characteristics and uses of the baton.

Penal Code section 835a(a)(4) states, "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force." 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. The courts give great deference to the police when choosing what weapon to use when responding to a threat. "Monday morning quarterbacking is not allowed." *Graham v. Connor*, 490 U.S. 386, 396 (1989). "Detached reflection cannot be demanded in the presence of an uplifted knife." *Brown v. United States*, 256 U.S. 335, 343 (1921) (Holmes, J.).

In other words, the Courts require those who evaluate an officers' use of force to do so while considering the totality of the circumstances that faced Deputy Evans and Deputy Godett. Both initially tried to resolve the situation without arresting Lucas. They provided him verbal warnings and attempted to reason with him. Lucas refused to accept that he could not return to the store after he had caused a disturbance with the employees. Deputies followed reasonable procedures to arrest Lucas, but Lucas turned violent towards deputies. His actions overpowered both deputies as he physically assaulted them numerous times. Lucas' actions escalated when he took the baton and struck Deputy Evans with it once in the back. This demonstrated that Lucas was willing to cause great bodily injury or death to the deputies and they were forced to defend themselves. Deputy Evans even attempted a less-lethal tool when he pepper-sprayed Lucas, but the pepper spray was ineffective, and Lucas was about to strike Deputy Evans a second time. His arm was lifted above his head, as if to use his full force against Deputy Evans. Keeping in mind that Lucas had already overpowered both deputies, it was likely that Lucas' second strike to Deputy Evans would have been extremely dangerous. With only moments to react, Deputy Godett fired his weapon at Lucas in defense of Deputy Evans. Lucas' actions towards the deputies placed their life in danger and their actions were objectively reasonable to protect themselves and each other.

Conclusion

Based upon a review of the evidence submitted by Kern County Sheriff's Department, Deputies Evans and Godett each responded reasonably to a lethal threat in self-defense and defense of others. There is no state criminal liability for their uses of deadly force under the circumstances of this case because the shooting is legally justified.

Sincerely,


Cynthia Zimmer
Kern County District Attorney