



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

ANDREA S. KOHLER
ASSISTANT DISTRICT ATTORNEY

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

August 5, 2022

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

Re: BPD Officer-Involved Shooting of Johnathan Brown on December 18, 2020
Officers William Vining, Marc Lugo, Anthony Flores, Kelton Beattie and Andrew Ferguson
Giovanetti Avenue, Bakersfield, CA. Case documented in 20-232304.

Dear Chief Terry,

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

Summary

On December 18, 2020, at approximately 3:58 p.m., BPD officers were dispatched to 8712 Maria Angelica Street in southwest Bakersfield for a report of a male subject, Johnathan Brown, holding a firearm to his head and threatening to shoot himself inside the residence. BPD officers responded nearby to Dolores Whitley Elementary School to meet with the reporting parties, Brown's sister and mother. The reporting parties advised that Brown was distraught over the loss of his girlfriend the day prior and had threatened to commit suicide if officers responded. While officers were preparing a plan to set up a perimeter and perform surrender call-outs at the residence with the aid of the Mental Evaluation Team (MET), BPD officers on scene announced over the radio that Brown had exited the residence and was walking down the street. Additional officers responded to the scene and contacted Brown who was standing in the street, smoking a cigarette. Brown was non-responsive to officers' commands to lay on the ground. Mr. Brown lifted his t-shirt, displaying a handgun that was tucked in his waistband. Brown continued to be non-responsive to officers' commands to "don't do it" and "get on the ground." Senior Officer Ferguson deployed a less lethal 40 mm projectile which struck Brown on the chest but was ineffective at gaining compliance. Brown then turned and ran from officers and began shooting at officers as he fled. During the incident, Officer Beattie returned fire but was shot in the leg and right hand by Brown. Officers Vining, Lugo, Flores and Ferguson also fired their weapons at Brown, who sought cover

behind a parked vehicle. Sr. Officer Ferguson suffered a graze gunshot wound to the bicep during the incident. Mr. Brown suffered three gunshot wounds.

After Brown was subdued and no longer posed an immediate threat to officers and the public, officers contacted Brown, placed him in handcuffs and began performing life-saving medical treatment on Brown's wounds. Members of the Bakersfield Fire Department and Hall Ambulance responded on scene and took over medical treatment of Brown, who was transported to Kern Medical where he succumbed to his injuries.

Legal Principles and Analysis

Brown's actions demonstrated a clear threat to the lives of BPD Officers and members of the public who were present in the area. A firearm is an inherently deadly weapon in the ordinary use for which it was designed. California law permits the use of deadly force by any person in self-defense or defense of a third person, if [1] the individual reasonably believed that he or she (or a third party) was in imminent danger of being killed or suffering great bodily injury; [2] the individual reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and [3] the individual used no more force than was reasonably necessary to defend against that danger. California Penal Code (PC) §§ 196 and 835a outline the circumstances under which a peace officer is authorized to use force, including deadly force. Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest to prevent escape, or to overcome resistance. (PC § 835a(b)) PC § 196 reads in relevant part: "Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, [...] when the homicide results from a peace officer's use of force that is in compliance with Section 835a."

Peace officers may use deadly force only when necessary in defense of human life. (PC § 835a(a)(2)). When determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer. (PC § 835a(a)(2)).

The legislature mandated in PC § 835a(a)(2) that officers shall use de-escalation tactics if objectively reasonable based on the particular circumstances of each case. Additionally, when feasible, peace officers shall make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, before the use of force, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (PC § 835a(c)(1)(B)). The decision to use force shall be consistent with law and agency policies. (PC § 835a(a)(3)).

Here, officers responded to a suicidal subject they knew to be armed with a handgun that he had previously pointed to his head while telling his family members he was going to shoot himself. Officers knew Brown to be distraught and mentally unstable. When officers observed Brown outside of his residence, they had to confront him as he posed a threat to subjects who were present in the neighborhood.

During the encounter with BPD officers, Brown ignored officers' commands to get on the ground and rather responded by lifting his shirt to brandish a handgun that was in his waistband. Officers attempted to de-escalate the situation by issuing commands to Brown to get on the ground, which he ignored. Officers further tried to de-escalate the situation by deploying a less-lethal projectile which struck Brown on the shoulder but was ineffective in achieving Brown's compliance. When Brown fled from officers while armed with a handgun, officers had to pursue him as he posed a threat to officers on scene and members of the public who may become potential hostages or victims. When Brown drew his handgun

and began firing at Officer Beattie, Officer Beattie and his fellow officers had no choice but to return fire to defend their lives and the lives of residents in the area. When Brown continued to fire at officers, officers had no choice but to return fire until Brown no longer posed an immediate threat to officers and members of the public.

Though Brown was identified as suicidal and armed with a handgun, officers did not deploy deadly force in response solely to the threat that Brown posed to himself. The officers involved employed deadly force only after Brown proved himself an imminent threat by shooting at the responding officers.

Conclusion

Based upon a review of the evidence submitted by the Bakersfield Police Department, Officers William Vining, Marc Lugo, Anthony Flores, Kelton Beattie and Andrew Ferguson all 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 J. Zimmer
Kern County District Attorney