



**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

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

August 5, 2022

Greg Terry
Bakersfield Police Department
1601 Truxtun Ave.
Bakersfield, CA 93301

**Re: BPD Officer-Involved Shooting of Alfredo Garcia On August 13, 2021
Officers Michael Broida, Adam Garcia, and Victor Swall
Stephens Dr, Bakersfield, CA.
Bakersfield Police Department Case 2021-155632.**

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 OSI 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 August 13, 2021, at 8:35 AM, Officers from the Bakersfield Police Department (BPD) were dispatched to a peace disturbance at the Southwest Veterinarian Hospital (2905 Brundage Lane, Bakersfield, CA). Employees reported that Mr. Garcia was screaming at staff and causing a commotion. By the time officers arrived, Mr. Garcia left the scene and walked across the parking lot to his apartment.

At 8:47 AM, officers from BPD were dispatched to Mr. Garcia's apartment complex upon request by the property manager because Mr. Garcia was inside an apartment causing a peace disturbance with his mother. Mr. Garcia was not on the lease. The property manager informed the officers that she wanted him removed from the premises. Neighbors informed officers that Mr. Garcia had a history of assaulting his mother and that prior to their arrival, the mother exited the apartment and handed them a purse containing knives, telling them to call the police. A neighbor reported to officers that Mr. Garcia stated "I'm going to kill you...no, you're staying in here." Another neighbor told officers that Mr. Garcia stated "shut your mouth, sit right here, and she is with God."

A team of four fully uniformed officers responded to the front of the apartment to make verbal contact with Garcia. After 15 minutes of attempting to make contact with Garcia, officers saw Garcia through a window with blood on the front of his shirt. A crisis negotiator responded to the scene, and for several

minutes, officers attempted to gain entry to the apartment and make contact with Garcia.

At approximately 42 minutes into the police presence, Officer Perez reported to the officers she could hear the mother yelling inside the apartment “no, no.” Officer Perez reported to Senior Officer Perkins that she could hear the mother yelling inside the apartment but could not make out what she was saying. At approximately 45 minutes, Officer Perez reported she could hear the suspect’s mother crying inside but could not make out what she was saying. Senior Officer Guinn can be heard on body camera video stating “Alfredo we can’t leave until we check on your mom, open the door and put down the knife.”

At approximately 50 minutes into the encounter, additional fully marked patrol vehicles with uniformed officers arrived on scene. Officer Perez was able to communicate with the mother through the window and the mother can be heard yelling on body worn camera. Mr. Garcia was telling his mother to tell the police to leave. Approximately 1 hour after police first came on the scene, Garcia’s mother can be heard yelling on body worn camera video. Officer Perez told her to come to the door and she stated she could not.

A team of officers responded to the backside of the apartment and could hear the mother screaming inside. Officer Calderon jumped over the back fence to obtain access to the patio. As he did this, Mr. Garcia approached the door screaming obscenities at the officer. Officer Calderon retreated and jumped back over the fence into the parking lot. Additional fully uniformed officers then arrived to the back of the apartment to assist.

Mr. Garcia then appeared at the back door holding a knife. This information was broadcast over the radio to officers on scene. Officers on the back patio announced to the suspect, “police department,” they used the suspect’s name “Alfredo,” and stated come to the door because they “do not want anyone to get hurt.” Officer Swall, equipped with a less lethal impact weapon, was situated at the back sliding glass door prior to entry.

Just prior to entry into the apartment, the suspect’s mother can be heard on body worn camera videos screaming and crying saying “no, no, no.” Senior Officer Perkins decided to make forcible entry inside the apartment and the information was broadcast over the radio to officers on scene. More than an hour after police arrived and began de-escalation tactics, Senior Officer Perkins struck the front door with the battering ram and forced the door open.

As officers entered the apartment, Garcia’s mother was screaming. Senior Officer Perkins yelled “he has the knife to her,” “put the knife down,” “he’s stabbing her,” and officer body camera videos show Garcia striking his mother with the knife. As officers entered into the front of the apartment they could see the suspect on a recliner, holding his mother’s hair in one hand and a knife in his other hand. Officers told him to drop the knife several times. Garcia began striking his mother multiple times with the knife. As Senior Officer Perkins was yelling “he has a knife to her,” “he has a knife to her,” “put it down,” “put it down,” “he’s stabbing her,” “put the knife down.” The mother was still screaming, and a second team of officers entered the apartment from the back slider door.

Garcia struck his mother approximately 15 times with the knife before any officer fired their duty weapon. Officer Broida fired two rounds striking the suspect in the rear end and hand. Officer Swall entered the living room from the back of the apartment and fired one time as the suspect was flailing around on top of his mother, still armed with the knife. Officers pulled the mother off the recliner to separate her from Garcia. Another officer pulled the dazed Mr. Garcia off the recliner at which point, he lunged for a knife. On the body worn camera you can hear “hands, hands, hands,” and then 3 additional

gun shots. Officer Garcia fired three rounds, striking Alfredo Garcia. The shots fired by Officer Garcia occurred after Garcia made a frantic effort to reach for a knife.

Mr. Garcia's mother had blood covering her right arm and suffered from a laceration to her arm. Alfredo Garcia did not survive the injuries from the encounter.

Legal Principles and Analysis

Alfredo. Garcia's actions demonstrated a clear, imminent threat to the lives of officers on scene and his mother. A knife is a dangerous weapon and is indisputably a deadly weapon when used in the manner Garcia used it against his mother.

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. (CALCRIM 505, PC § 197).

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(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(2)).

The legislature mandated in PC§ 835a(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(3)).

Here, uniformed officers responded to an individual who has knives in his possession, made threatening statements about his mother to neighbors, barricaded himself inside his mother's apartment, has a history of assaulting his mother, and just prior to police arrival caused a peace disturbance.

Multiple officers arrived on scene outnumbering the suspect in an effort to have him peacefully surrender. Multiple fully marked patrol vehicles were positioned in immediate proximity to Mr. Garcia's location. Every officer on scene was wearing a department issued uniform, signifying they were law enforcement.

Multiple officers loudly shouted commands to the suspect, both in English and Spanish, telling him to come outside and to have his mother come to the door. A Crisis Negotiator attempted phone contact, unsuccessfully, with Mr. Garcia multiple times. Officers informed Mr. Garcia that they did not want

anyone to get hurt.

Officers allowed substantial time to pass in an effort to gain Mr. Garcia's compliance, which was unsuccessful. Officers breached the front door after an hour on scene when Mr. Garcia's mother began screaming in distress. When officers made entry inside the apartment, they could see that Mr. Garcia was violently attacking his mother with a knife in close proximity to multiple officers in the living room.

"A peace officer is justified in using deadly force [...] only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary [...]: [A] to defend against an imminent threat of death or serious bodily injury to the officer or to another person; [B] to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended." (PC § 835a(c)(1)). "A threat of death or serious bodily injury is 'imminent' when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person [...] and] from appearances, must be instantly confronted and addressed." (PC § 835a(e)(2)). "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 the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight [...]." (PC § 835(a)(4)). A peace officer does not have a duty to retreat. (PC 835a(d)).

Here, Mr. Garcia was violently attacking his mother with a deadly weapon and at no time attempted to drop the weapon or surrender. Even in the face of officers breaching into the apartment, Garcia still continued his assault. Even after officers used lethal force, Garcia continued to reach for additional deadly weapons.

Law enforcement had probable cause to arrest Mr. Garcia for felony charges arising from the assault with a deadly weapon: PC 245(a)(1). Officers were working with knowledge that Mr. Garcia was in possession of knives, made threatening statements about his mother to neighbors, has a history of assaulting his mother, and was involved in a peace disturbance prior to officers' arrival.

Officers utilized several de-escalation tactics that proved unsuccessful. Officers identified themselves as law enforcement and attempted verbal communication with Mr. Garcia. Only after more than an hour of attempts at de-escalation did officers force entry to the apartment, and then only fired after Garcia continued to use the knife to strike his mother. After initial shots were fired, officers fired again only when Garcia refused to comply and attempted to re-arm himself with a knife. Once the imminent threat had been abated, further use of deadly force was not employed.

Conclusion

Based upon a review of the evidence submitted by Bakersfield Police Department, Officers Broida, Garcia, and Swall 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 shootings are legally justified.

Sincerely,


Cynthia Zimmer
Kern County District Attorney