



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

December 16, 2021

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

**Re: Officer-Involved Shooting on November 10, 2020, at 720 Lincoln Ave in Bakersfield involving Daniel Reyes and KCSO Deputy Phillip Tampinco, KCSO report number 2020-00156895**

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 November 10, 2020, 911 received calls about a suspicious person pounding on the front door of 720 Lincoln Avenue at night. The occupants of the home indicated that the person was unknown to them. After pounding on the front door, the suspicious person was seen pacing outside the apartment. The suspect was described as a Hispanic male with a dark hooded sweatshirt. Deputy Tampinco dispatched himself to the call, and knew that two other deputies were also on their way.

When deputy Tampinco arrived in a marked patrol car, wearing full sheriff's department uniform, he noticed the suspect and illuminated the area with his flashlight. The suspect began to walk away from the deputy as the deputy tried to talk to the suspect. As the deputy approached the suspect, he noticed a very large, fixed blade kitchen knife in the suspect's pocket. The deputy ordered the suspect to drop the knife, as the deputy unholstered his firearm. The suspect replied, "what knife?"

The deputy ordered the suspect to drop the knife, and to face away from the deputy, and to get to

his knees. The deputy still had no backup and had not yet had the opportunity to search the suspect who was wearing baggy clothing. Based on the lighting conditions, the deputy could not tell whether the suspect had actually dropped the knife. The deputy intended on waiting for backup before approaching the suspect. The suspect appeared at times to comply with the deputy's commands, but began to flee from the deputy, before eventually turning around and facing the deputy, instead of continuing to flee. There were no barriers preventing the suspect from continuing to run away from the deputy. While the suspect's fists were clenched at chest level, with the deputy unable to see whether the suspect had a weapon in his hands, before backup arrived, the suspect ran straight at the deputy. The deputy ordered the suspect to stop and warned him that he would shoot him, as the deputy ran backwards, trying to keep the suspect at a safe distance. The suspect closed the distance quickly, and the deputy fired while running backwards when the suspect's hands were about 12 inches from the end of the deputy's firearm.

Before pulling the trigger, the deputy considered less-than-lethal options, but given that the suspect was running straight at him, may have been armed with a weapon, and was ignoring commands to stop, the deputy did not feel he had time to safely transition to and deploy a baton, pepper spray, or taser, without increasing the risk of great bodily injury or death to himself. A taser seemed unlikely to penetrate the suspect's baggy clothing and pepper spray would likely affect the deputy's vision (making him more vulnerable to attack). Finally, given the speed of the suspect's approach, there would not have been enough time to retrieve any of those three less-than-lethal weapons. Given the speed with which the suspect pursued the deputy, and how close the suspect was to the deputy, the deputy believed he was forced to shoot the suspect, to avoid being gravely injured or killed himself.

### *Legal Principles and Analysis*

The legal standards that govern the use of deadly force by law enforcement require us to examine what the officers reasonably believed at the time of the shooting with regard to the threat of imminent death or great bodily injury, judged from the perspective of a reasonable officer in the same situation, based on what the officers knew or believed at the time of the shooting. In other words, it is the officer's reasonable belief at the time of the shooting—that there is a threat of imminent death or great bodily injury—that controls, rather than a hindsight view that incorporates facts not known to the officer at the time of the shooting. According to Penal Code 835a, 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.

When we consider whether less-than-lethal options would have been feasible at the time the suspect was charging at the deputy, we have to consider both the officer's subjective beliefs, and what a reasonable person in that position—knowing what the officer knew—would have believed. Once the suspect is charging at the deputy, while the deputy is pointing a firearm at the suspect and telling the suspect he will shoot him if he doesn't stop, it seems clear that the suspect will not be deterred by the threat of less-than-lethal force, where the threat of lethal force did not deter the suspect. Beyond a suspect's voluntary decision to comply with commands when faced with a threat of force, the other consideration is whether the officer could have stopped the threat with any other less-than-lethal options. On these facts, there simply was not enough time or space to safely transition from the firearm to a less lethal weapon; at the time that the suspect is running at the deputy, when the suspect's hands are about 12 inches from the deputy's firearm, any such

transition would have put the deputy in even greater peril of death or serious bodily injury than he was already.

“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. 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.

Penal Code 835a(a)(3) states, “the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.”

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.”

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.).

Questions often arise regarding the number of shots fired by police officers when responding to deadly threats. In *Plumhoff v. Rickard*, the United States Supreme Court considered whether officers went too far by firing fifteen rounds. *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012. In concluding the officers’ use of force was reasonable the Court stated, “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.” *Id.* at 2022.

Given the threat that was presented, the environment, the speed at which the suspect ran towards the deputy, the suspect actually had a clear path to run from the deputy but instead chose to turn around and run directly at the deputy, the thick clothing the suspect wore, the deputy had no backup present, the suspect was non-compliant and continued to run at the officer even when faced with the threat of lethal force, the suspect previously had a knife and had not yet been searched, less-lethal options (such as pepper spray, taser, or baton) would not have been effective or feasible. The suspect’s actions here presented an immediate threat of death or great bodily injury to the deputy, and even though the deputy ran backwards in an attempt to prevent or delay the threat, ultimately, the suspect was able to get his hands within twelve inches of the deputy’s firearm. .

*Conclusion*

Based upon a review of the evidence submitted by Kern County Sheriff's Office, Deputy Tampinco responded reasonably to a lethal threat in self-defense. There is no state criminal liability for the use of deadly force under the circumstances of this case because the shooting is legally justified.

Respectfully Submitted,

  
Cynthia J. Zimmer  
District Attorney