



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

Re: BPD Officer-Involved Shooting of Juvenile on February 14, 2022
Officer Joseph Davis
Buena Vista Rd/Pensinger Rd, Bakersfield, CA
Bakersfield Police Department Report Number 2021-30183

Dear Chief Terry:

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed the 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 Committee has completed its review. The findings are noted below.

Summary

On the evening of February 14, 2022, the Bakersfield Police Department received a 9-1-1 call from a juvenile that reported to dispatchers that he had a knife and was seeking to kill the next person he sees. The juvenile, a sixteen-year-old male, provided his location and his own description to facilitate officers being dispatched to his location. At one point during the call, the juvenile expresses that he is sorry for the officer that will have to shoot him. The juvenile further elaborated that he intended to "die tonight," and when asked to put down the knife by the 9-1-1 operator, the juvenile strongly asserts "No, I'm dying tonight, I don't care..." Responding officers made contact with the juvenile, who was walking on the sidewalk when initially contacted. When contacted, and throughout the encounter with responding officers, the juvenile openly held and displayed an opened and locked pocketknife.

The juvenile declined repeated efforts made by responding officers to drop the knife. Contact with the juvenile was made primarily through a female officer that made efforts to de-escalate the

situation by speaking to the juvenile in a calm voice, and who made several entreaties to have the juvenile drop the knife. During the 9-1-1 call as well as during subsequent statements to officers, it was evident that the juvenile was intending to provoke an officer-involved-shooting as a method by which to commit suicide. This conclusion is supported by the juvenile's statements to dispatchers, apologizing to the "officer that has to shoot me," as well as his statements to officers on scene. When officers converged on the juvenile's location, three officers positioned themselves with a variety of less-lethal use of force options, including a 40mm launcher and two officers with Tazers prepared for use. Because of the presence of a deadly weapon (the knife) in the hand of the suspect, officers were also in possession and ready to use lethal force if required.

As the confrontation evolved, the juvenile actively sought to identify an officer present who was prepared to use lethal force, and officers on the scene, to the extent possible, attempted to conceal their readiness to use lethal force if required, with less-lethal options prominently displayed. Review of the several body-cam videos of the officers included evidence of the juvenile actively seeking to identify officers present that were deploying lethal force options, in an apparent attempt to facilitate his stated intention of dying that evening.

After many feigned attempts to charge at officers, and after repeated requests to surrender and drop the knife, the juvenile began taking deep, exaggerated breaths before beginning to sprint headlong toward the officers, which included Officer Joseph Davis. Only when the juvenile, armed with a knife being held in a manner that made it ready for stabbing, made a headlong rush toward officers did the officers employ force. Both Tazers and the 40mm launcher were deployed, with the launcher making contact and the Tazer probes appearing to not sufficiently connect to be effective. Within fractions of a second of the less-lethal deployments, Officer Davis fired a single shot from his duty handgun, with the shot striking the juvenile in the upper arm. The juvenile was stopped short of the officers and fell to the ground. Medical aid was provided and the juvenile survived his injuries.

Subsequent investigation revealed mental health factors that are believed to have contributed to the juvenile's suicidal ideations, and further corroborated the evidence that the juvenile was intent upon suicide by means of instigating an officer-involved-shooting.

Legal Principles and Analysis

Penal Code section 835a was amended by the CA legislature in 2019. As of January 1, 2020, the standard for the use of deadly force by a peace officer in California is defined as follows:

(b) 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 arrest, to prevent escape or to overcome resistance.

(c)(1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or 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. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(CA Penal Code section 835a.)

When officers responded to the 9-1-1 call initiated by the juvenile, they had been informed of the juvenile's stated intention to "kill the next person he sees." Additionally, officers quickly became aware of the apparent suicidal ideations exhibited by the juvenile. Faced with a 16-year-old male who was agitated, intent on attempting suicide by compelling an officer-involved shooting, the responding officers took reasonable measures to attempt to de-escalate the situation. These measures included speaking in a calm voice, imploring the juvenile that there wanted to help, that they neither wanted, nor intended to shoot him, concealing lethal force options, and deploying less-lethal options.

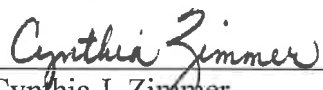
Ultimately, the attempts at de-escalation were not enough to overcome the dissuade the juvenile, who, after garnering his resolve made a final movement to sprint toward officers. At the time the juvenile began his headlong rush toward officers, he was about 18 feet from Officer Davis' position. As the juvenile approached, he continued to hold the knife in his hand, in a manner making it ready to be used as a stabbing weapon. Once the juvenile began this charge toward officers, he presented as an imminent threat of death or bodily injury not only to Officer Davis, but to all officers present on the scene. As a result of the armed assault toward officers, both less lethal and lethal force options were deployed simultaneously. Given the speed at which the juvenile was headed toward officers with a deadly weapon, it would not be feasible, nor reasonable for Officer Davis to wait to determine the result of the less-lethal deployment options before employing lethal force to ensure the safety of himself and other officers.

In the face of an admittedly suicidal suspect, armed with a knife and who had refused all orders to disarm himself charging at him at full speed, Officer Davis responded by firing a single shot from his firearm to ensure the safety of himself and other officers. When the imminent danger posed by the juvenile's rush at officers was abated, further lethal force was not employed.

Conclusion

Based upon a review of the evidence submitted by the Bakersfield Police Department, Officer Davis responded reasonably in self-defense and the defense of others to defend against an imminent threat of death or serious bodily injury posed by the juvenile's armed advance upon Davis and other officers. There is no state criminal liability for the use of deadly force under the circumstances of this case and the shooting is legally justified.

Sincerely,


Cynthia J. Zimmer
Kern County District Attorney