



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 Jose Ruiz on June 13, 2021  
Officers Travione Cobbins-Sherrell, Robert Robles, Jose Medrano, Eli Brown,  
Raymond Hackleman, and Paul Madriz  
Dr. Martin Luther King Blvd and East 3<sup>rd</sup> Street, Bakersfield CA  
Bakersfield Police Department Report Number 2021-113264**

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 June 13, 2021, Jose Ruiz was driving a stolen BMW when he was pulled over by BPD Officer Sherrell near Dr. Martin Luther King Jr. Blvd and East 3<sup>rd</sup> Street for failing to have license plates affixed to the vehicle. Officer Sherrell initiated contact with Mr. Ruiz at the driver's door and asked Mr. Ruiz for his license. Mr. Ruiz stated he did not have a license. Seated inside the vehicle with Mr. Ruiz were his two minor children and his girlfriend. Officer Sherrell returned to his patrol vehicle to run a records check on the vehicle and learned the car had been reported stolen. While Officer Sherrell was running the records check on the stolen car, Mr. Ruiz's son (who was seated in the front passenger seat) saw Mr. Ruiz remove a gun from his waistband and begin loading it with ammunition.

Officer Sherrell instructed Mr. Ruiz to turn off the engine but Mr. Ruiz refused to comply and instead drove away from the traffic stop. Officer Sherrell began a vehicle pursuit based on Mr.

Ruiz' leaving the scene of the traffic stop. Mr. Ruiz did not yield, and instead drove to Dr. Martin Luther King Jr. Blvd. where he continued driving southbound. Mr. Ruiz ran the red light at the intersection with East Brundage Lane and collided with another vehicle. The collision caused Ruiz's vehicle to spin around 180 degrees and come to a stop. When Ruiz's vehicle stopped, it was facing the front of Officer Sherrell's patrol vehicle. Mr. Ruiz fired multiple shots at Officer Sherrell as Officer Sherrell was attempting to exit his patrol vehicle. Officer Sherrell returned fire after being fired upon by Mr. Ruiz.

Officer Sherrell pursued after Mr. Ruiz on foot after Ruiz ran southbound towards a dirt lot south of the Arco gas station located at the corner of Dr. Martin Luther King Jr. Blvd and East Brundage. Ruiz then changed his path and turned his body slightly towards Officer Sherrell as he began to run back towards Dr. Martin Luther King Jr. Blvd. where there were multiple vehicles in the roadway. Officer Sherrell then fired several rounds at Mr. Ruiz. Ruiz then continued to run southbound on Dr. Martin Luther King Jr. Blvd, running underneath the Highway 58 overpass. Officer Sherrell gave repeated commands to Ruiz to drop his gun. Mr. Ruiz did not comply with Officer Sherrell's commands. While under the overpass, Mr. Ruiz threatened to kill himself and put the gun to his head. Mr. Ruiz then pointed the gun directly at Officer Sherrell as they stood facing each other under the overpass. Officer Sherrell then fired multiple rounds at Mr. Ruiz.

Mr. Ruiz then continued to run southbound on Dr. Martin Luther King Jr Blvd. where he turned slightly east and ran into the parking lot of the Fiesta Market. Ruiz then attempted to carjack two individuals in the parking lot but was unsuccessful in both attempts. After attempting two carjackings, Mr. Ruiz turned around and pointed his gun directly at Officer Sherrell. Officer Sherrell fired multiple rounds at Mr. Ruiz, striking Mr. Ruiz and causing him to fall to the ground. Mr. Ruiz fell to the ground but still managed to maintain control over his firearm as he remained seated on the ground.

At this point, additional officers arrived at the Fiesta Market to assist Officer Sherrell. Officers repeatedly instructed Mr. Ruiz to put down his firearm, but he continued to ignore their commands. While Ruiz was sitting on the asphalt, he raised his firearm to his head and threatened to kill himself. Mr. Ruiz made statements about wanting officers to kill him and continued to refuse to obey officers' commands to put his firearm down. Mr. Ruiz eventually began counting down from three to one and then pointed his firearm directly at officers, who were staged just south of Mr. Ruiz' location. That action resulted in Officers Robles, Medrano, Brown, Hackleman, and Madriz firing multiple rounds at Mr. Ruiz, striking him and ultimately resulting in his death.

### **Legal Principles and Analysis**

In this case, Officers Sherrell, Robles, Medrano, Brown, Hackleman, and Madriz used deadly force in response to the threat Mr. Ruiz posed to them and civilians in the area.

Both federal and state law allow for an officer that has reasonable cause to believe a person has committed a public offense or is a danger to others to use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386.

In deciding whether an officer who fired his or her weapon did so lawfully, one must consider what a reasonable person would have done in a similar situation with similar knowledge and experience. One must decide whether the officers' beliefs and action were objectively reasonable under all of the circumstances known to him or her, as they appeared at the time. "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.

The law does not impose a duty to use less lethal options. "Where the peril is swift and imminent and the necessity for action is immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." (*People v. Collins* (1961) 189 Cal.App.2d 575, 589.) The rationale for allowing police officers such discretion while under pressure is explained in *Scott v. Henrich* (1994) 39 F.3d 912, 915: "Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment."

Additionally, an officer threatened with an attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of his right of self-defense a person may stand his ground and defend himself using force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge.

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.)

In this case, the officers who fired at Mr. Ruiz had a reasonable belief that the use of deadly force was necessary to defend against an imminent threat of serious bodily injury or death. As for Officer Sherrell, Mr. Ruiz began the confrontation by firing directly at Officer Sherrell, causing Officer Sherrell to return fire in self-defense. Ruiz refused to obey repeated commands to drop his firearm while running past pedestrians and vehicles in the area and had already proven himself an imminent danger by shooting at the officer. Ruiz then again pointed his gun directly at Officer Sherrell before fleeing into the Fiesta Market parking lot where he tried to carjack two different people. Ruiz then pointed his gun directly at Officer Sherrell again. Officer Sherrell had a reasonable belief that Mr. Ruiz posed a threat of imminent death or serious bodily injury to him and others in the area from the time Mr. Ruiz first fired multiple rounds at Officer Sherrell to the time Mr. Ruiz pointed his gun at officers in the Fiesta Market parking lot.

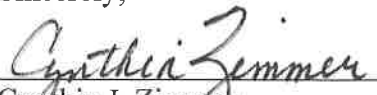
As for Officers Robles, Medrano, Hackleman, Madriz, and Brown, these officers fired upon Mr. Ruiz only after Mr. Ruiz pointed his firearm directly at them/officers staged in the parking lot. This action came after Ruiz had already fired multiple shots at Officer Sherrell. These officers had a reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to themselves and/or officers in the area. When Mr. Ruiz pointed his gun directly at officers, it was reasonable to believe he posed an imminent threat of serious bodily injury or death upon those officers.

Based upon the totality of the circumstances, Mr. Ruiz posed an imminent threat of serious bodily injury or death to officers and civilians in the area. He committed an attempted murder on a police officer then ran armed with a firearm past pedestrians and vehicles, then committed two attempted carjackings, before turning the gun on officers again. Mr. Ruiz posed a grave risk to the officers and the several civilians in the area.

## **Conclusion**

Based upon a review of the evidence submitted by the Bakersfield Police Department, Officers Sherrell, Robles, Brown, Hackleman, Medrano, and Madriz responded reasonably in self-defense and the defense of others to defend against an imminent threat of death or serious bodily injury posed by Mr. Ruiz. 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