



OFFICE OF THE DISTRICT ATTORNEY
C O U N T Y O F K E R N

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 Alejandro Chagoya on November 10, 2020
Officer Chad Dickson, Detective Brent Thomas and Detective Keith Schlecht
3800 White Lane, Bakersfield CA
Bakersfield Police Report Number 2020-208858**

Dear Chief Terry,

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 findings of the Officer-Involved Shooting Committee are noted below.

Summary

On November 10, 2020, at approximately 1923 hours, Officers with the Bakersfield Police Department responded to 3800 White Lane regarding a subject with a firearm. The reporting party advised the BPD dispatch there was a subject inside his apartment threatening him with a firearm. The reporting party stated there was an altercation occurring inside the apartment with the suspect. At this time, officers arrived on scene and attempted to knock on the front door. While knocking on the door, the reporting party opened the front door and advised the suspect, later identified as Alejandro Chagoya, had fled out of the rear door to the apartment in a westbound direction.

Officers engaged in a foot pursuit of Chagoya and advised that Chagoya began running northbound in the dirt field directly west of the victim's apartment. As the officers were pursuing Chagoya on foot, Chagoya fired in their direction. The officers returned fire, striking Chagoya once in the right hand. Chagoya was taken into custody without further incident and transported to Kern Medical Hospital for treatment, where he survived his injuries. A review of available body-camera and firearm-related evidence confirmed that Chagoya fired multiple shots during the pursuit and confirmed that Chagoya was

the first to fire shots.

Legal Principles and Analysis

The facts in this case are determined by considering all available information, including but not limited to law enforcement body worn camera video, recorded statements by witnesses, pictures, 911 radio dispatch recordings and logs and investigative reports

The issue is whether the conduct of Officer Dickson and Detectives Thomas and Schlecht was criminally culpable and without justification. To charge Officer Dickson and Detectives Thomas and Schlecht with a criminal violation, the prosecution would have to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. Therefore, to lawfully charge Officer Dickson, Detective Thomas or Detective Schlecht with a crime, the prosecution must be able to prove that they did not act in lawful self-defense or defense of others. If these officers' actions were justifiable and necessary as lawful self-defense or defense of others, then criminal charges would not be warranted.

Where potential dangerous, emergency conditions, or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler* (2009), 171 Cal.App.4th 516 at p. 528.)

Penal Code section 835a was amended by the CA legislature in 2019. As of January 1, 2020, the standard for deadly force by a peace officer 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.)


The totality of the evidence shows Officer Dickson and Detectives Thomas and Schlecht were justified in believing that Mr. Chagoya posed an imminent threat of death or serious physical injury to officers and civilians. Central to the determination of whether an imminent threat existed is the fact that Mr. Chagoya, fired shots towards officers as he fled, before the officers returned fire. Not only did the officers receive information that a suspect was armed with a firearm and had threatened the life of another, but the suspect actually fired a weapon several times in the officers' direction. Being fired upon would put every reasonable person in fear for his life, thus justifying use of deadly force and returning fire.

A 9mm Glock handgun with an extended capacity magazine was recovered near Mr. Chagoya, in addition to numerous spent and fresh 9mm shell casings. Ultimately Chagoya admitted he had the gun, was able to describe it, and admitted he fired at officers first before they returned fire. Each of the officers involved actually and reasonably believed that they were in danger of being shot by Chagoya and thus suffering serious bodily injury or death. The officers fired their weapons within milliseconds of each other only after being fired upon, and each stopped firing when Mr. Chagoya went down and did not appear to be an imminent threat to continue firing additional shots or fleeing.

Conclusion

Chagoya's act of firing during the pursuit made less-lethal force options untenable and required the immediate deployment of potentially lethal force to subdue the imminent threat that Chagoya posed. Therefore, the actions of the officers were legally justified as self-defense and defense of others under California State law. There is no violation of state law because these officers' actions were reasonable, justified, and necessary under the circumstances.

Sincerely,


Cynthia J. Zimmer
District Attorney