



OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SHASTA



Stephanie A. Bridgett
District Attorney

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July 7, 2021

Undersheriff Jason Barnhart
Shasta County Sheriff's Office
300 Park Marina Circle
Redding, CA 96001

RE: June 2, 2020 Deputy-Involved Shooting
Shasta County Sheriff's Office case 20S016320
Redding Police Department case 20R034421
Shasta County District Attorney Investigation Division Case number 20GC0416
Involved Deputy: Thomas Fleming
Involved Person: Robert Lyon (DOB 08/18/1954)

Undersheriff Barnhart:

The Shasta County District Attorney's Office has completed an independent review of the above-referenced deputy-involved shooting incident. For purposes of this review, the District Attorney's responsibility is to review the evidence and decide as to whether there is sufficient evidence to support the filing of criminal charges. Issues of policy, training, tactics, or civil liability were not considered. For the reasons set forth below, we conclude that the shooting was lawful.

Consistent with county-wide officer-involved shooting protocol, the lead agency in this investigation was the Redding Police Department, with the assistance of the Shasta County District Attorney's Office, and the Shasta County Sheriff's Office. In conducting the investigation, investigators and officers from the Redding Police Department and allied agencies interviewed witnesses and collected physical evidence in an effort to gain a full and complete picture of the events that resulted in the fatal shooting of Robert Lyon. The findings of the District Attorney are based upon a review of the totality of the materials compiled in the multi-agency investigation.

FACTUAL SUMMARY

On June 2, 2020, at approximately 10:39 a.m. the Tehama County Sheriff's Office transferred a 9-1-1 call to the Shasta County Sheriff's Office. The woman making the call had called several times. The Shasta County dispatcher could not understand the woman, but the dispatcher believed that she was attempting to report an incident.

The dispatcher was able to determine that the call was coming from a phone located at 22283 Adobe Road, a property belonging to Robert Lyon. Deputies Van Eyck, Fleming, and Dorn responded to the location to investigate the 9-1-1 calls. Sergeant Fernandez also responded. Deputy Van Eyck had been to the Lyon residence for calls for service in the past, including an incident in which Lyon attacked his daughter with a machete. Deputies knew that Lyon was not friendly towards law enforcement.

On Adobe Road about 100 yards from Lyon's address, Deputy Van Eyck contacted a man and woman. The woman identified herself as Quadira Wilson-Borden. The man identified himself as Tommy Watkins. Wilson-Borden told Deputy Van Eyck that she had earlier tried to call 9-1-1. She told Deputy Van Eyck that about one hour before she called 9-1-1, Lyon had broken into her trailer located on the Adobe Road property armed with a shotgun and told her, "Get the fuck out!" While he did not point the shotgun at her, Wilson-Borden was fearful Lyon would injure her due to his agitated state. After Wilson-Borden left the trailer, Lyon continued to yell obscenities at her, prompting her to call her boyfriend, Tommy Watkins, to go back to the location from his place of work. Wilson-Borden also told Deputy Van Eyck that Lyon had fired the shotgun into a car earlier that morning. She also said that there was possibly another man, Tommy Watkins' brother Hershell Watkins, hiding on the property.

While Deputy Van Eyck was speaking with Wilson-Borden, Deputy Fleming reported that he saw smoke coming from Lyon's residence.

Deputy Van Eyck reported Wilson-Borden's statements to Sergeant Fernandez and Deputies Fleming and Dorn.

Deputies moved their patrol cars to the front of the Lyon residence. Deputy Fleming retrieved his department issued M4 rifle from his vehicle. Sergeant Fernandez announced the deputies' presence using the public address system in his vehicle, telling Lyon to come out with his hands up. Lyon did not respond. Sergeant Fernandez then activated his siren and made several more announcements over the PA system.

After about 20 seconds, deputies heard Lyon yell, "Fuck you!"

Sergeant Fernandez and Deputy Dorn saw Lyon exit the residence. Their view was obstructed by the thick brush growing near the residence, however. Deputy Fleming also saw Lyon, but had a much clearer view. Deputy Fleming could see that Lyon was holding a shotgun. Fleming yelled, "Drop the gun!" several times. Lyon started to walk toward Deputy Fleming, who had his rifle pointed at Lyon. Lyon then turned and walked behind a trailer. Deputy Fleming told the other deputies that Lyon was heading their way.

A few seconds later, Lyon reappeared in front of Deputy Fleming. Lyon started to walk toward Deputy Fleming. Deputy Fleming again yelled at Lyon, "Drop the gun!" several more times. Lyon yelled back, "You're going to have to shoot me!" Deputy Fleming saw Lyon raise his shoulders, a move that indicated to Deputy Fleming that Lyon was raising the shotgun.

Deputy Fleming fired one shot from his rifle that appeared to Deputy Fleming to hit Lyon in the abdomen or chest. Lyon reacted to being shot by taking a step to the side and hunching over a bit, but he remained standing. Lyon did not drop the shotgun. Lyon took a couple more steps toward Deputy Fleming and again started to lift his shoulders with the shotgun still in his hand. Deputy Fleming shot Lyon again.

Deputies had requested medical units to standby when they learned that Lyon had been armed with the shotgun. After Deputy Fleming shot Lyon and the shotgun was secured, deputies called for medical assistance to Lyon. Before medical responders entered the scene, the deputies had already started life saving procedures, including chest compressions. The medical units arrived and took over lifesaving procedures. Lyon was declared dead at the scene.

During the neighborhood canvas for witnesses after the shooting, several of the neighbors told investigators that they had heard Sergeant Fernandez's announcements and siren blasts. Many of the neighbors also heard Deputy Fleming telling Lyon to drop the gun. One neighbor could see Lyon walking toward the deputies with something in his hand, describing it as looking like a long, black club. This neighbor heard the deputies yelling, "Stop right there! Put your hands up!" She told the investigators that she could see Lyon continue to walk toward the deputies, and she could hear the deputies yelling at Lyon to drop the gun and put his hands up. She said as he continued to walk toward the deputies, her view of Lyon was blocked by a bush on the property. She said a few seconds later she heard three gunshots. She said she could clearly hear the deputies' orders from her vantage point about 40 yards away.

Deputy Fleming has an extensive background in law enforcement including assignments on the SWAT team for 10 years and being a K-9 handler for over seven years. He has also served in the armed forces. During his time in the military, Fleming was deployed overseas in combat operations.

An autopsy of Lyon conducted by a forensic pathologist revealed his cause of death to be gunshot wounds to the chest.

LEGAL STANDARD

In 2019 the Governor signed into law amendments to Penal Code section 835a that alter the law regarding peace officers' use of deadly force. Peace officers may only use deadly force when necessary in defense of human life, taking into consideration the particular circumstances of each situation (Section 835a(a)(2)). "The decision of an 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” (Section 835a(a)(4) and (e)(3)). An officer may use deadly force “to defend against an imminent threat of death or serious bodily injury to the officer or to another person” (Section 835a(c)(1)(A)).

An officer who is attempting to make an arrest is not required to retreat if the person whom the officer is attempting to arrest resists or threatens to resist (Section 835a(d)).

Deadly force is defined as “any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm (Section 835a(e)(1)).

An imminent threat is one in which “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” (Section 835a(e)(2)).

LEGAL ANALYSIS

In applying the above legal standard to the facts of this case, it is important to consider a number of factors including the circumstances leading up the deadly force event, These factors include the officer’s training and experience as it related to the threat he was facing, and, perhaps most importantly, the totality of the facts known to the officer at the time he used the deadly force.

Before the deadly encounter, the facts and circumstances known to the Shasta County Sheriff’s deputies can be summarized as follows:

The deputies were responding to the Adobe Road location due to incomplete 9-1-1 calls from Wilson-Borden. Wilson-Borden was calling from a location with which deputies were familiar due to prior calls for service, including a machete attack by Lyon on his daughter. From these prior calls for service, deputies were well aware of Lyon’s past violent behavior and antipathy towards law enforcement.

As deputies arrived at the scene, they learned that Lyon had discharged a shotgun at a vehicle earlier that morning. Wilson-Borden also reported that about one hour before her 9-1-1 calls Lyon, while he was armed with a shotgun, had entered her trailer while she was asleep and yelled at her to leave the property. She also told deputies that there was possibly one more man on the property hiding from Lyon.

Sergeant Fernandez had announced the deputies’ presence and ordered Lyon to come out of the residence with his hands in the air. Lyon refused, even cursing at the deputies. At one point Deputy Fleming saw smoke coming from Lyon’s residence. Deputy Fleming armed himself with his department-issued rifle.

Deputy Fleming saw Lyon with a shotgun in his hand. Lyon was walking directly toward Deputy Fleming. Deputy Fleming told Lyon to drop the gun. After walking around the rear of a trailer, Lyon returned and walked toward Deputy Fleming. Deputy Fleming again ordered Lyon

to drop the gun. Lyon refused, telling Deputy Fleming, "You're going to have to shoot me!" Lyon raised his shoulders in a motion that indicated to Deputy Fleming that Lyon was going to raise the shotgun, possibly into a shooting position. Deputy Fleming then shot Lyon. Lyon was struck by the bullet but raised his shoulders a second time while walking toward Deputy Fleming. Deputy Fleming fired at Lyon again, ending the threat.

At the time Deputy Fleming fired at Lyon, Lyon posed an imminent threat to the deputy and others, as that term is defined in the law.

Lyon had the present ability to inflict injury or death, as he was armed with a firearm, clearly a deadly weapon. Such a weapon would allow Lyon to seriously hurt or kill others, even from some distance away.

Lyon also had the opportunity to inflict injury or death. He was facing Deputy Fleming while armed with the shotgun in the presence of multiple deputies. He had twice walked toward Fleming while armed with shotgun.

Finally, his apparent intent is clear. Deputy Fleming knew that Lyon had earlier fired the shotgun at a vehicle and threatened another person with the weapon. Lyon refused to put down the gun, despite numerous orders. He told Fleming that he (Fleming) would have to shoot him. Perhaps most indicative of his apparent intent is his motion to raise the shotgun at Fleming. Even after being shot once, he failed to drop the gun and again attempted to raise it.

Facing the imminent threat posed by Lyon, Deputy Fleming chose to use deadly force to end the threat.

CONCLUSION

Under these circumstances, Deputy Fleming was justified in using deadly force in response to Lyon's actions. I find the shooting to be lawful and will take no further action in this matter.

Sincerely,



STEPHANIE A. BRIDGETT
DISTRICT ATTORNEY

cc: Chief Bill Schueller, Redding Police Department
cc: Deputy Thomas Fleming, Shasta County Sheriff's Department