

DISTRICT ATTORNEY'S REPORT

OFFICER INVOLVED SHOOTING

OF

CODY BRANDON CHAVEZ



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INVESTIGATION OF THE SHOOTING DEATH OF

CODY BRANDON CHAVEZ

INTRODUCTION

The Alameda County District Attorney's Office has assembled an Officer Involved Shooting (OIS) Team which consists of experienced Senior, Assistant, and/or Deputy District Attorneys as well as experienced District Attorney Inspectors who are sworn peace officers. The OIS Team investigates any death of a person caused by an officer involved shooting in Alameda County. The OIS Team is authorized by agreement with each local law enforcement agency serving Alameda County to conduct a separate, but parallel, investigation into the circumstances leading to the shooting death.

The OIS Team focuses exclusively on the question of whether there is sufficient evidence to prove beyond a reasonable doubt that a law enforcement official committed a crime in connection with the shooting death. The OIS Team does not examine collateral issues such as whether law enforcement officials complied with internal policies, used appropriate tactics, or any issues that may give rise to civil liability. This report should not be interpreted as expressing any opinions on non-criminal matters.

This report considers the changes to Penal Code Section 835a(a), effective on January 1, 2020, wherein the California Legislature declared its intent that peace officers use deadly force only when necessary in defense of human life and that officers use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

The OIS Team prepares a report documenting the investigation, factual background, and legal conclusions resulting from the February 17, 2022 fatal officer involved shooting of Cody Chavez. The prosecutor supervising the OIS Team reviews materials from the investigation and the OIS Team report. The case is reviewed by multiple prosecutors, including the Chief Assistant District Attorney and the District Attorney. When the report is completed and approved, it is delivered to the Chief of Police or Sheriff of the involved law enforcement agency. Thereafter, the report is made available to the public.

SCOPE OF THE INVESTIGATION

On February 17, 2022, at 3:38 p.m., Officer Brian Jewell and Officer Mario Guillermo of the Pleasanton Police Department shot and killed Cody Chavez after responding to a dispatch of a domestic violence suspect who had locked himself in his girlfriend's apartment. The incident occurred at 4899 Willow Road, Apartment [REDACTED] in Pleasanton, California.

Soon after 4:00 p.m., the on-call OIS Team was notified that an officer involved shooting had occurred. The OIS Team responded to 4899 Willow Road in Pleasanton. The OIS Team completed a walk-through of the scene and observed evidence items, the positioning of Pleasanton Police Department Armored Response Vehicle (ARV) and the body of the decedent.

That evening and continuing into the early morning of February 18, 2022, the OIS Team participated in recorded interviews of Officer Ken White, Officer Anthony Repetto, Officer Brian Jewell and Officer Mario Guillermo. Present and participating in the interview were members of the Pleasanton Police Department, the OIS Team, the subject officers and their attorney from the Law Offices of Rains-Lucia-Stern.

FACTUAL SUMMARY

The following statement of facts is based on the 911 call, Computer Aided Dispatch (CAD) printout, Body Worn Camera (BWC) of Officer White, BWC of Officer Jewell, BWC of Officer Repetto, BWC of Officer Guillermo, incident footage from the Alameda County Sheriff's Office (ACSO) aerial drone, statements taken from Officer White, Officer Jewell, Officer Repetto and Officer Guillermo, statements taken from the domestic violence victim, Witness 1, the report prepared by Pleasanton Police, and the autopsy report.

On February 17, 2022, at 1151 hours, Witness 1 called 911 to report that her boyfriend, Cody Chavez, had assaulted her, smothered her with a pillow, prevented her from leaving her apartment and had taken her cell phone over the course of the previous night. Witness 1 told dispatch that she had allowed Mr. Chavez to "talk his way" back into her apartment despite previously obtaining a Restraining Order prohibiting him from being around her or the apartment.¹ Witness 1 described Mr. Chavez as a "time bomb" to dispatch. Based on the 911 call, Pleasanton Police Officers responded to 4899 Willow Road.

The location of 4899 Willow Road is the western facing driveway entrance to a multi-unit apartment complex called The Galloways. One entrance faces west on Willow Road and the other is North facing onto Owens Drive.

¹ An Emergency Protective Order had been issued by the court on January 20, 2022 after a previous incident of domestic violence by Mr. Chavez on Witness 1. Mr. Chavez had violated that order after it was issued. Witness 1 had applied for a restraining order and had a hearing date scheduled for April 4, 2022, however, there is no record that Mr. Chavez had been served with the paperwork. At the time of this incident, it appears that the Emergency Protective Order had expired and was no longer in effect and no other restraining orders were in effect.



Google Earth image of apartment complex

Officer Jones and Officer Repetto arrived on scene first at 12:08 p.m., and contacted Witness 1 at the leasing office of the apartment complex. Witness 1 told the officers that Cody Chavez, her boyfriend who sometimes stayed with her, had beaten her the night before. Witness 1 had a visible injury to her lip, and Witness 1 said Mr. Chavez had smothered her with a pillow to the point of faking unresponsiveness. Witness 1 also reported that Mr. Chavez had taken her phone when she said she was going to call the police. In addition, Witness 1 told the officers that Mr. Chavez had threatened to kill her if she called the police. Witness 1 told officers that Mr. Chavez had eventually allowed her out of the apartment that morning so she could go to work. Witness 1 directed officers to her apartment, number [REDACTED]

Apartment [REDACTED] is a ground level apartment with a south-facing front door approximately 70 feet East from Willow Road. The leasing office where Witness 1 had fled to is approximately 115 feet East of the front door



Google Earth image of apartment complex. Red circle indicates Apartment [REDACTED]

Apartment [REDACTED] has two windows on the front (South) facing wall of the building, one window on the West side of the building and another window on the front door. However, all the windows

had drawn blinds preventing officers from being able to see into the apartment for the duration of the incident.

After speaking with Witness 1, officers were provided with a photo of Mr. Chavez and received consent from Witness 1 to enter her apartment. The initial responding officers attempted to make contact with Mr. Chavez at Apartment [REDACTED] by knocking on the front door, making announcements using their patrol car's public address (PA) speaker and calling him on his phone. Attempts to contact him using the PA system started at about 1:00 p.m., and continued for almost three hours. During these initial attempts to contact Mr. Chavez, officers briefly saw a male looking through the blinds of the west window to the apartment.

Officer Jones and Officer Repetto were provided a code to unlock the front door of Apartment [REDACTED]. When they unlocked the door, Mr. Chavez immediately locked it again, preventing them from opening it. Mr. Chavez repeated this behavior multiple times. After these initial contact attempts failed, members of the East County Tactical Team, who had been on another assignment, arrived at the scene.

At 1:40 p.m., SWAT and an Armored Response Vehicle (ARV) arrived on scene. The purpose of the ARV was to provide support and a closer point of cover to officers attempting to communicate, observe the apartment, possibly breach and eventually arrest Mr. Chavez via the front door of Apartment [REDACTED]. The ARV was parked, facing east, at the curb directly in front of the front door to Apartment [REDACTED] a distance of about 17 feet. The ARV took over providing the PA commands from the patrol vehicles.

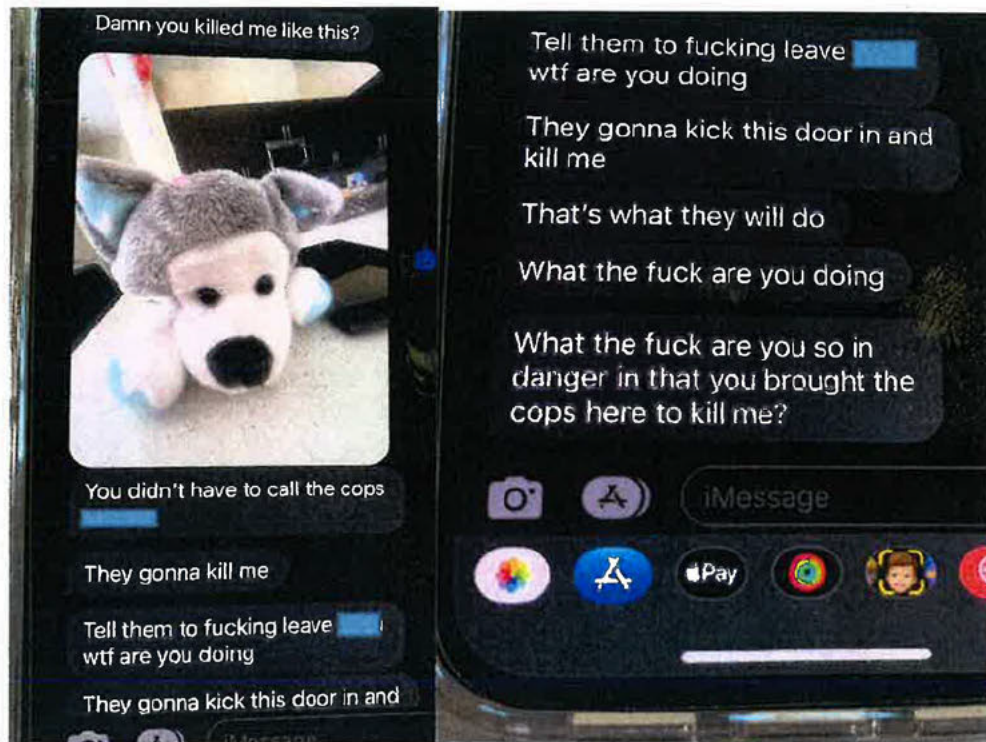


Google Earth image of driveway. Red oval indicates where ARV was parked.

The specially trained crisis negotiation team arrived on scene at approximately 2:10 p.m. For the duration of the incident after their arrival, the crisis negotiation team attempted to call and text Mr. Chavez at the number provided by Witness 1. At 2:52 p.m. and 3:18 p.m., the police negotiator

made phone contact with Mr. Chavez and Mr. Chavez claimed he was in San Jose at work despite officers having seen him in the apartment.

Witness 1 had notified officers that Mr. Chavez had texted her after the police had arrived. Specifically, officers were aware that Mr. Chavez had texted Witness 1 the following:



Photographs of text messages sent to Witness 1. Name deleted.

The specially trained police crisis negotiators connected with Mr. Chavez twice. However, when the negotiators connected with Mr. Chavez, he hung up on the negotiators both times. Mr. Chavez ignored numerous calls and requests sent via text by the negotiator to come outside peacefully and talk. Negotiators invited Mr. Chavez to tell his side of the story.

During the more than three-hour period that patrol officers and negotiators were trying to make contact with Mr. Chavez in the house, other officers obtained a Ramey warrant signed by a judge for Mr. Chavez' arrest in response to the assault and imprisonment of Witness 1. Officers were also advised that Mr. Chavez had previous arrests for resisting arrest, assault on officers, assault with a deadly weapon and domestic violence.

Except for the two calls and the earlier texts to Witness 1, Mr. Chavez was not communicating with anyone or responding to the PA commands. To re-establish communication and gain intelligence about what Mr. Chavez was doing inside of the apartment, the leaders of the tactical team decided to breach the door and inserted a wheeled robot that had a camera and two-way communication system. This decision was made to prevent any potentially dangerous encounter with Mr. Chavez by officers.

A team of tactical officers advanced from the ARV and placed the robot directly at the front door. Once the robot was placed, the team used a ram or breaching tool and forced the door open. Once the door was open, the robot attempted to roll forward into the apartment. Officers quickly realized that Mr. Chavez was directly behind the front door preventing it from opening fully and attempting to slam it on the robot. Officers unsuccessfully issued commands to Mr. Chavez to stop and exit. However, Mr. Chavez was unresponsive and continued to prevent the robot from entering. Officers retreated and Mr. Chavez eventually picked up and threw the robot out of the doorway. During this brief interaction with the robot, officers on the ARV were able to confirm the male in the apartment was Mr. Chavez and that Mr. Chavez was armed with a large kitchen knife.

After Mr. Chavez blocked the robot's entry, officers on scene devised a second plan to gain intelligence about what was happening inside and to establish a line of communication. The plan was for a team of four officers to approach and break the front living room window and blinds, about eight feet to the west of the front door. The officers planned to insert a drone once the window was broken.

The team consisted of four officers: 1] an officer with a breaking tool, 2] an officer armed with a pistol to cover the bedroom window behind the officers further west of the living room window, 3] an officer with a pistol facing east toward the front door and 4] Officer Ken White providing less than lethal cover. Officer White was armed with an FN 303, which is capable of firing 15 less lethal pellets using compressed air.

While the four-person team approached the window, the following officers were providing cover from the ARV: SWAT Officer Brian Jewell was located in the turret on top of the ARV with a department issued rifle, and SWAT Officer Mario Guillermo was located near the front passenger side wheel of the ARV with a department issued rifle. Also using the engine block/hood area for cover, but closer to the front bumper of the ARV, was Officer Anthony Repetto with a less lethal shotgun loaded with bean bag rounds.



Still shot from video taken by the ACSO drone showing the relative position of ARV, cover officers, the front window and the front door of Apartment [REDACTED] before the referenced officers were fully setup in the positions described above.

The front door of Apartment [REDACTED] had a small front patio, recessed from the front face of the building by three to four feet. Due to the front door being set back from the wall, officers at or near the living room window could not see the front door. Officer Jewell, from his position on the ARV, verbally provided updates regarding Mr. Chavez' location to all officers on scene, repeating "at the door" several times at an interval of about every two to three seconds.



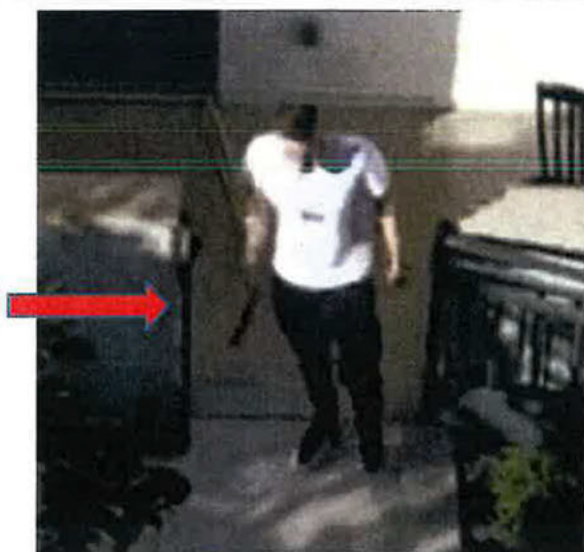
Still shot from video taken by the ACSO drone as officers broke window of Apartment [REDACTED]

The team of four officers broke the front window and began to pull out the window blinds to clear a sight line. Mr. Chavez then exited the front door of the apartment still holding the large kitchen knife, clearly visible, in his right hand.

Still shot from ACSO drone as Mr. Chavez came out of Apartment [REDACTED] with knife.



Enlargement of prior still shot showing large knife in Mr. Chavez' hand (indicated by red arrow).



Officers began giving Mr. Chavez commands to drop the knife. Mr. Chavez ignored the commands. Mr. Chavez walked straight out towards the ARV in front of the apartment with his head turned towards the team of officers at the window to his right. Once Mr. Chavez walked out a few feet past the recessed portion of the front porch, he began turning his body towards the team of officers at the window, approximately eight feet to his right. Multiple officers gave Mr. Chavez repeated commands to drop the knife. Mr. Chavez turned his body in the direction of the team of officers at the window. Officer Repetto then fired two bean bag rounds at Mr. Chavez from the hood/front bumper of the ARV. The bean bag rounds struck Mr. Chavez in the left thigh or hip area, but they appeared to have no effect.



Still shot from ACSO drone video as Mr. Chavez began to run towards officers at the window. Tree partially covers position where Officer White was located.

As Mr. Chavez was struck with the bean bag rounds, he leaned his upper torso forward in an athletic stance and took a large, fast step towards the team of officers at the window. Mr. Chavez began to run toward the officers, who were eight feet away, lunging over a plant to make a more direct line towards them. The large step “cut the corner” of the T-shaped intersection between the concrete walkway leading from the apartment and the sidewalk that ran horizontally left and right from the walkway.



This image was obtained from a KTVU news crew positioned across Owens Road. Mr. Chavez held the large kitchen knife while running towards officers. Officer White, with the less lethal FN 303 pellet gun is the officer to the left.

In response to Mr. Chavez charging at the team of officers at the window, Officer White fired approximately five rounds from the less lethal FN 303 to the torso and head of Chavez with no effect. Officer White was also backpedaling away from Mr. Chavez, who was coming towards him. Officer White later indicated he was in fear of Mr. Chavez and wanted to switch to his handgun due to the FN 303 being ineffective. However, he believed he did not have the space or time to switch from his less lethal pellet gun to his handgun before Mr. Chavez would reach him.

As Mr. Chavez broke towards the officers at the window, immediately after Officer White used the FN 303 rounds, Officer Jewell and Officer Guillermo both fired their rifles. Officer Jewell fired five rounds from his elevated turret position and Officer Guillermo fired two rounds. Mr. Chavez fell forward, chest down after being struck by the rifle rounds. He did not move further and was pronounced dead at the scene by Faulk Ambulance personnel.



Evidence photos of large kitchen knife recovered from Mr. Chavez. Photo on left shows the knife at the scene. Photo on the right shows the knife in relationship to a ruler.

In his statement to investigators, Officer Jewell said that when he saw Mr. Chavez charging towards the officers at the window, he believed Mr. Chavez was advancing on the group of officers to kill them. Officer Jewell said that if he had not fired at that point, Mr. Chavez was going to reach the other officers with the knife. Officer Jewell told investigators that he feared for the lives of the officers near the window at the time he fired his rifle.

Officer Guillermo indicated in his statement that he had seen the less lethal bean bag rounds be ineffective. Officer Guillermo was aware that Mr. Chavez was within reach of the officers at the time he fired his rifle. Officer Guillermo told investigators that he feared for the lives of the officers near the window at the time he fired his weapon.

An autopsy performed by Dr. Vivian Snyder of the Alameda County Coroner's Office identified three gunshot wounds as the cause of death. Mr. Chavez suffered gunshot wounds to the side of the head, the side of the upper back and the side of the mid-back.

APPLICABLE CALIFORNIA LAW

The sole question addressed by the District Attorney's investigation is whether Officer Jewell or Officer Guillermo violated any applicable laws when they discharged their weapons at Cody Chavez. Whether or not an officer is criminally liable depends upon (1) the facts of the case, and (2) whether these facts constitute any criminal violations under existing statutory law. The quality of the evidence, if any, showing a criminal act or acts must be measured against the standards used by the District Attorney's Office in deciding whether or not to charge anyone with a crime. The California District Attorney's Uniform Crime Charging Standards manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, is satisfied that the evidence shows the accused is guilty of the crime to be charged. Additionally, the charging

standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The California Penal Code provides:

Section 187: Murder is the unlawful killing of a human being or fetus with malice aforethought.

Section 188: Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

Section 192: Manslaughter is the unlawful killing of a human being without malice.

Section 196: Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, either –

- (1) In obedience to any judgment of a competent Court; or,
- (2) When the homicide results from a peace officer's use of force that is in compliance with Section 835a (Amended by Stats. 2019, effective January 1, 2020).

Section 197: Homicide is also justifiable when committed by any person in any of the following cases:

- (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
- (2) When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
- (3) When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or

- (4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Section 199: The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be justifiable or criminal depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (*People v. Williams* (1977) 75 Cal. App. 3rd 731). In protecting oneself or another, a person may use all force which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (See CALCRIM 505). In order to justify killing another person in self-defense or in the defense of another, actual danger of death or great bodily injury is not necessary. (CALCRIM 505).

Pursuant to CALCRIM 505:

A homicide is justifiable and not unlawful when committed by a person who:

- (1) Reasonably believed he or she or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) Reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) Used no more force than was reasonably necessary to defend against that danger.

Pursuant to CALCRIM 507 (Revised April 2020):

A homicide by a peace officer is justifiable and not unlawful when the killing was committed while, based on the totality of the circumstances, the force was necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person.

A peace officer who makes or attempts to make an arrest need not retreat or stop because the person being arrested is resisting or threatening to resist. A peace officer does not lose his/her right to self-defense by using objectively reasonable force to arrest or to prevent escape or to overcome resistance. (CALCRIM 507).

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 to another person. (CALCRIM 507).

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (CALCRIM 505 and 507). It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224).

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal.

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. In *Graham v. Conner* (1989) 490 US 386, the Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police 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. Conner* at pp. 396-397.

Pursuant to Penal Code, Section 835a(a), effective January 1, 2020, the California Legislature declared that the authority to use physical force conferred on peace officers is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. It further set forth that in changing the law, the intent is that peace officers use deadly force only when necessary, in defense of human life. The Legislature declared officers shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

Penal Code Section 835a(a)(4) states:

That 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 the 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.

Therefore, in the present case, to establish criminal liability, the evidence must show beyond a reasonable doubt, based on a totality of the circumstances, that Officer Jewell and Officer Guillermo killed Mr. Chavez and did not reasonably believe that either himself personally, or another, was in imminent danger of death or great bodily injury.

CONCLUSION

The OIS Team conducted a separate, parallel investigation and review of the facts and circumstances leading to the death of Cody Chavez. The facts of this incident were determined by considering statements of witnesses, radio transmissions, videos, autopsy, and statements by Officers White, Repetto, Jewell and Guillermo. The issue in this case is whether beyond a reasonable doubt, the prosecution can prove the conduct of Pleasanton Police Officer Jewell and Officer Guillermo on February 17, 2022 was criminal and without justification. The overwhelming, credible, and admissible evidence shows that Officer Jewell and Officer Guillermo acted lawfully and in defense of other officers.

To charge Officer Jewell or Officer Guillermo with a criminal offense, the People must prove beyond a reasonable doubt that each officer did not act in lawful self-defense or defense of others in Pleasanton Police Department's attempt to apprehend Mr. Chavez. This evaluation must be analyzed from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by Officer Jewell and Officer Guillermo at the time they used deadly force.

The available evidence indicates Pleasanton Police Officers were justified in believing Cody Chavez posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the information known to the officers prior to the shooting and their observations as the incident unfolded.

Prior to their contact, officers were informed by dispatch or other officers of Mr. Chavez' previous arrests involving assault, resisting arrest, use of a deadly weapon and domestic violence. Prior to the shooting, Mr. Chavez did not respond to the trained crisis negotiation team nor police commands to exit the apartment for almost two hours. Twice Mr. Chavez prevented officers from opening the apartment; first when Officers Jones and Repetto initially responded with the unlock code for the apartment and second when officers rammed the door and attempted to insert the robot. Additionally, Mr. Chavez was observed at the door holding the large kitchen knife that he would be holding at the later and final confrontation. These things were known to officers before the final confrontation involving Mr. Chavez and the officers had even started.

Mr. Chavez was seen walking out of the front door with his hands at his side, holding the large kitchen knife. It was not concealed in anyway. In the six seconds it took Mr. Chavez to walk from the front door to where he started running towards the officers, multiple officers repeatedly told Mr. Chavez to drop the knife. Mr. Chavez did not drop the knife.

Even when Officer Repetto struck Mr. Chavez with the bean bag round, Mr. Chavez did not drop the knife. The Pleasanton Police had used negotiation, commands, and less lethal measures, but all of these measures had failed. After the bean bag rounds were ineffective, the team of four officers near the window were only eight feet to the right of Mr. Chavez. The ARV was directly in front of Mr. Chavez and he had a path clear of officers to his left. However, upon being struck by the bean bag, Mr. Chavez turned and lunged right, toward the closest officers. Mr. Chavez did not run towards the avenue of escape to his left or back into the apartment. These were all indicators of violent, life threatening resistance.

Mr. Chavez stood six feet, four inches tall. While most people could close the distance of eight feet quickly, due to Mr. Chavez' size, he was capable of closing this distance especially fast. Objectively, the threat posed by an armed Mr. Chavez to the officers at the window was immediate and deadly. Subjectively, each officer confirmed in their statement their fear for the other officers (or themselves in the case of Officer White).

Pursuant to Penal Code section 835a, a police officer acting in compliance under this section, who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall an officer be deemed an aggressor or lose his right to self-defense by the use of objectively reasonable force to effect the arrest or prevent escape or to overcome resistance.

Pleasanton Police attempted to speak with Mr. Chavez for hours before the final confrontation. Additionally, steps were taken to make sure that less than lethal options were in place should Mr. Chavez resist his detention pursuant to the warrant obtained for his arrest. Furthermore, less than lethal bean bags had been deployed. These were reasonable steps taken to achieve an arrest, however, they proved ineffective.

When Mr. Chavez ran towards officers from a distance of eight feet with a knife, he was a danger to multiple officers. Officer Jewell's and Officer Guillermo's use of deadly force was necessary because Mr. Chavez posed an imminent threat of death or serious physical injury to the officers at the window. Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Based on a totality of the circumstances as objectively evidenced by BWCs, Aerial Drone Footage, and statements of the involved officers, the officers' fear for the safety of the other officers was clearly reasonable. The involved officers' subjective fears were confirmed in their voluntary statements given during the investigation. All available evidence indicates Officers Jewell and Guillermo were justified in believing Cody Chavez posed a significant threat of death or serious bodily injury to others. Accordingly, in applying the California District Attorney's Uniform Crime Charging Standards, there is insufficient evidence to support the criminal prosecution of Officer Brian Jewell and Officer Mario Guillermo.