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THE DISTRICT ATTORNEY
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June 28, 2021

Sheriff William Gore
San Diego Sheriff's Department
9221 Ridgehaven Court
San Diego, CA 92123

Re: Non-fatal shooting of Mr. Dustin Charles Banzhof by San Diego Sheriff's Deputy Andrew Sudbury on June 14, 2020; SDSL Case No. 20125155; DA Special Operations Case No. 20-073PS; Deputy District Attorney assigned: Samira Seidu Deputy District Attorney Investigator assigned: Steve Hutchinson.

Dear Sheriff Gore,

We have reviewed the reports and other materials compiled by the San Diego Sheriff's Homicide Unit concerning the shooting of Dustin Banzhof. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was submitted to the District Attorney's Office for review on September 11, 2020.

Summary

On Sunday June 14, 2020, at approximately 8:30 p.m., San Diego County Sheriff's deputies responded to a 911 call at a Lakeside residence. The caller said her children's father, Dustin Banzhof, threatened to kill her. Deputies arrived at the residence and safely removed her and her children from the house. As deputies were speaking with the caller, Banzhof drove away from the residence. Deputies pursued Banzhof, who failed to yield and eventually led deputies back to the residence. Banzhof armed himself with a rifle and fired multiple rounds in the air and towards deputies. Banzhof got into a pickup truck with his rifle and drove down his driveway towards the deputies. Banzhof made a quick movement inside the truck and Deputy Andrew Sudbury fired two rifle rounds at Banzhof. Banzhof drove back to the garage and re-entered the house. Banzhof continued to fire his rifle throughout the night. Negotiators from the Sheriff's Crisis Negotiations Team (CNT) spoke with Banzhof over the phone but he refused to surrender.

Later that evening at approximately 2:26 a.m. Banzhof stepped out of the house. A less-lethal projectile was fired at him, striking his right upper leg. Banzhof was taken into custody with the assistance of a canine and transported to Sharp Memorial Hospital for treatment of non-life-threatening injuries and later booked into County Jail. Banzhof has been charged with assaulting a peace officer with a firearm, committing an offense while on bail, and resisting an officer with force and violence. A preliminary hearing is scheduled for August 4, 2021.

Persons Involved

Dustin Banzhof is a 40-year-old resident of Lakeside. Deputy Sudbury has been employed by the San Diego County Sheriff's Department for seven years.

Statement of Civilian Witness 1 (CW1)

CW1 is Banzhof's girlfriend. They have been in a relationship for 12 ½ years and have lived together for 11 years. They have two children together. During her first statement, CW1 told deputies Banzhof tried to grab her. He spit on her and threatened to kill her multiple times. CW1 took her children, hid in a room, and called 911. As she was giving her statement, she alerted deputies to Banzhof driving away from the scene in a white SUV. CW1 said Banzhof had a broken shotgun in the home. CW1 stated Banzhof "has gone off the deep end" and needed help. When asked if she believed Banzhof would carry out his threat to kill her given his state of mind she responded "yes and no."

CW1 said on June 14, 2020, she left the house between 10:00 a.m. and 11:00 a.m. to go to her parent's house to work. She arrived home at about 3:00 p.m. or 3:30 p.m., and Banzhof was not home. CW1 called Banzhof and he told her he was drinking at his friend's house. CW1 said Banzhof arrived home angry at about 4:30 p.m. and began shouting at her. CW1 ignored him because she was used to his behavior. Banzhof began listening to loud music with headphones and began talking to himself. CW1 said Banzhof also made banging noises because he knew that would upset her.

CW1 said she did not recall why she called 911 for help but she was certain Banzhof said he wanted to kill her. She believed he pushed her when she was leaving the house. She had her two children to protect and decided to call. Banzhof never threatened to kill her before and she did not believe he meant it. She stated it was difficult for her to speak about it because she did not believe Banzhof would ever hurt her or her children. She just wanted help for Banzhof. She did not see Banzhof holding any firearms while she was inside the home but was aware that he possessed firearms because of his previous incident. She knew Banzhof had hidden a rifle and ammunition in the house because she has seen it in the past.

On June 15, 2020, officers conducted a follow up interview with CW1. CW1 stated that Banzhof has a drinking problem, abused prescription pills, and had a mental health issue but refused help. Banzhof had been "going off" for a long time. Banzhof believes he is in the military and the mafia. He also believes that he has been microchipped and is being watched.

Statement of Civilian Witness 2 (CW2)

CW2 heard Banzhof yelling intelligibly. Banzhof was saying that FBI was in the trees and they need to be cut out of the trees. Banzhof was also firing rounds in the air. He saw officers running down the hill when Banzhof fired in the air. He saw Banzhof standing in the driveway and firing in the air. It sounded like Banzhof was shooting a .22 but he could not see it because it was dark. He also could not see if Banzhof took a prone position because it was dark. When Banzhof got in his truck, revved his engine, and started rolling backwards, he heard officers say, "We're going to shoot. Show me your hands." He heard two "booms" and Banzhof drove forward and crashed into the garage.

Statement of Civilian Witness 3 (CW3)

CW3 was watching TV when he heard a squad car drive by. He heard Banzhof yelling and saying something along the lines of “get the big guns” and “dry fire” and heard a shot. CW3 saw Banzhof holding a rifle and firing off rounds in the driveway. He could not tell what kind of rifle it was because it was dark. He heard multiple shots going off throughout the night. He believes Banzhof fired 15-20 shots. He also heard a police officer shooting twice and he believes it was the police officers because it was on “the ground.”

Statement of Civilian Witness 4 (CW4)

CW4 heard gunshots and later heard a truck driving down from Banzhof’s residence. CW4 heard deputies telling Banzhof to stop driving. CW4 heard three gunshots and assumed it was the deputies firing because of the timing of the shots. CW4 believed Banzhof had been in the bushes shooting at the deputies earlier. CW4 did not see Banzhof shooting but could hear the gunshots travelling through the leaves.

Statement of Law Enforcement Officer 1 (LE1)

LE1 was dispatched to the call for service for a family argument. LE1 immediately recognized the address in the call and confirmed through dispatch that there had been a prior high-risk incident at the same location in which deputies responded to an assault with a deadly weapon. LE1 was aware that Banzhof was reported to have two firearms during this incident and only one was collected. LE1 was aware of another incident in which Banzhof was arrested with a pistol and was violent during the arrest. CW1 reported that there was possibly a broken shotgun in the home. She requested additional deputies to assist.

LE1 and LE2 arrived at the location first and staged half a mile away. CW1’s relative approached LE1 and LE2. The relative was on the phone with CW1. LE1 told CW1 to exit the house. CW1 initially refused but eventually agreed. LE1 drove her patrol vehicle up to the home’s driveway, picked up CW1 and her children, and drove them back to the staging area. CW1 said that Banzhof had spit on her and pushed her. CW1 pointed to a white SUV that drove by and said it was Banzhof. LE1 intended to arrest Banzhof for the incident involving CW1 so she pursued the SUV in her marked patrol car and activated her lights and sirens. Banzhof took off, drove into oncoming traffic lanes and made turns at high speed. Banzhof returned to his home and LE1 disengaged the pursuit. Banzhof’s house sits on a hill and is only accessible by a long and steep driveway. LE1 was concerned that Banzhof now had the high ground from his home which would put him at an advantage in a shooting or physical confrontation.

LE1 and other deputies positioned themselves on the right corner of the driveway. ASTREA advised the suspect was in the vehicle again and appeared intoxicated. LE1 planned to contact and arrest the suspect for misdemeanor domestic violence and felony evasion. LE1 formed a contact team with a K9 deputy and deputies assigned to lethal and less-lethal roles. LE1 laid out spike strips to prevent Banzhof from fleeing in the vehicle. LE1 and the contact team made their way up the driveway toward the residence. When the contact team made it to the backyard, ASTREA advised that Banzhof ran back inside the residence. LE1 and two other deputies took cover positions in the backyard. Deputy Sudbury communicated that Banzhof had a gun that looked like a rifle. LE1 and the other deputies withdrew back down the driveway to a better

cover position. LE1 heard six gunshots fired rapidly as she and the other deputies were retreating. LE1 believed the shots were fired at her and the other deputies and that the rifle was a .22 caliber. LE1 and the other deputies took cover behind their patrol vehicles. She heard many volleys of gunfire. LE1 could not see Banzhof, but ASTREA advised at one point that he had walked to the driveway and started shooting at deputies from a prone position.

LE1 saw a figure walking through the bushes several times and heard another deputy say there were rounds ricocheting near their feet. ASTREA advised Banzhof got into a vehicle. Banzhof revved the engine several times and started backing the vehicle down the driveway. LE1 reminded the deputies, "If we have to shoot, we have to shoot if you feel your life is in danger," but also advised them to get out of the way of the vehicle if it was possible. LE1 said they were in a bad spot and there were not a lot of options.

LE1 saw Banzhof put one hand out of the window. No one could see his other hand. She heard LE3 tell Banzhof "let me see your hands. If you do not come out of the car with your hands up, you're going to be shot." Banzhof did not respond to LE3's commands and continued to rev the engine. Deputy Sudbury or LE3 shot twice. She advised Sheriff's Communications that deputies had fired shots. LE1 heard Banzhof "gun" the engine and heard a crash. ASTREA advised Banzhof exited the car, ran back into the garage and was possibly bleeding. For the next ten minutes, Banzhof would go in from the garage, out to the vehicle, attempt to back down but then would go right back into the house and disappear. Banzhof continued to shoot randomly. She was ultimately directed to take pictures of the one casing she found where Deputy Sudbury was located. Although there were two shots fired, she only found one casing. She took photos of the one casing and collected it.

Statement of Law Enforcement Officer 2 (LE2)

LE2 took CW1's initial statement. Banzhof called CW1 while she was giving her statement. LE2 heard Banzhof say the only way he was going to leave his residence was with a gun. LE2 relayed this information to the deputies at the residence. He also relayed CW1's statement that Banzhof had a broken shotgun in the home.

Statement of Law Enforcement Officer 3 (LE3)

LE3 was one of the deputies who attempted to contact Banzhof in his backyard. LE3 heard ASTREA broadcast Banzhof was firing shots into the air as they were retreating down the driveway. LE3 made it to the bottom of the driveway with the other deputies and he and Deputy Sudbury posted up on the rear driver side of a patrol vehicle and pointed their weapons up at the driveway. ASTREA updated the deputies about Banzhof exiting and entering his residence and was shooting rounds into the air. LE3 heard rounds being fired. Approximately 15 to 20 minutes passed and LE3 heard Banzhof enter his vehicle. Banzhof backed his truck down the driveway towards LE3 and the other deputies and stopped before he reached their location. Banzhof revved the truck's engine several times. LE3 gave Banzhof verbal commands, "Show me your hands or you will be shot." LE3 said Banzhof only stuck one hand out of the driver's side window of his truck and then shifted his body around. Deputy Sudbury fired one round in Banzhof's direction but Banzhof didn't move. Deputy Sudbury fired a second round and Banzhof drove his truck back toward his house. LE3 heard a crash. LE3 said he had planned to

shoot Banzhof had he come any further down the driveway based on the knowledge that Banzhof had already fired his weapon and had it with him inside the vehicle.

Statement of Law Enforcement Officer 4 (LE4)

LE4 was a member of the Special Enforcement Division and assigned a position in front of Banzhof's residence as a member of the take-down team. CNT unsuccessfully attempted to persuade Banzhof to surrender. A decision was made to deploy CS gas into the garage. Banzhof continued to come in and out of his residence. At approximately 0226 hours, Banzhof came out of the front door of his residence and took two or three steps from his front door. LE4 illuminated Banzhof with his flashlight and fired an impact sponge round. The sponge round hit Banzhof near the top of his right thigh. LE5 released his canine towards Banzhof. The canine bit and held Banzhof. The take-down team safely took him into custody.

Statement Law Enforcement Officer 5 (LE5)

LE5 is a K-9 deputy and arrived on scene after the shooting incident. LE5 took a perimeter position with a view of Banzhof's driveway. LE5 followed behind SED's armored vehicle up to the top of the driveway. CNT was speaking with Banzhof, but he was in an extremely agitated state and was threatening to shoot deputies. LE5 heard that Banzhof wanted to go for a drive and stated he would "spray the driveway."

Deputy Andrew Sudbury's Statement

Sudbury responded to a radio call for assistance by LE1. Sudbury heard over the radio that Banzhof failed to yield and had driven back to his residence. Sudbury arrived at the residence and was briefed by LE1. Air support was doing call outs to Banzhof. The helicopter crewman told deputies that Banzhof had walked outside, appeared intoxicated and was stumbling around.

The group of approximately seven deputies formulated a plan to approach the residence and take Banzhof into custody. Sudbury was assigned to remain in the area of the front of the house in case Banzhof fled in his direction. The rest of the team went around the side of the house to contact Banzhof in the backyard. Sudbury opted to arm himself with his TASER at that time.

Sudbury saw Banzhof inside the house through the living room window walking towards the back door. Sudbury alerted the arrest team. Banzhof walked back toward the front door carrying what looked like a hunting rifle with a wooden stock in his right hand with the barrel pointing up. Banzhof walked out the front door, where he and Sudbury were now face-to-face. Banzhof was still holding the rifle barrel up. Sudbury transitioned from his TASER to his AR-15 rifle. Sudbury yelled at Banzhof to "drop it." Banzhof replied, "Ok, I will. Don't shoot." Banzhof turned around and walked back into the house. Banzhof walked through the living room toward the back door and out of sight. Sudbury broadcast that information and continued aiming his rifle toward the living room window and maintained cover while the other deputies retreated from the backyard to the base of the driveway. Sudbury began to back down with the deputies towards the driveway. When they reached a point where the driveway began to slope downward, they heard a shot. The arrest team moved faster down the driveway. Some took cover behind a patrol car parked at the base of the driveway. Sudbury heard more gunshots coming from Banzhof's house.

Sudbury and LE3 took cover across the street. Another deputy provided Sudbury with a heavy plated ballistic vest because Sudbury has little cover and was in a strategically vulnerable position. Sudbury and LE3 moved behind a patrol vehicle at the base of the driveway. Sudbury stayed behind the patrol car and continued to hear sporadic gunfire coming from Banzhof's residence. They aimed the spotlights from the patrol car to point up the driveway and illuminate the bushes near the residence. Sudbury heard updates from ASTREA stating Banzhof was continuing to go outside and was firing rounds into the air with what appeared to be an AK-47.

After about 30 to 40 minutes, Banzhof backed his truck down the driveway. Sudbury was still behind the marked patrol vehicle. It stopped about 25 yards away from the deputies. The truck was positioned at an angle and Sudbury could clearly see Banzhof through the driver's side window. Banzhof revved his engine repeatedly. LE3 shouted verbal commands to Banzhof and warned him that he would be shot. Banzhof appeared agitated and was looking at them and saying something. The driver's side window was down and Banzhof had his left hand and head out of the window and was making gestures. They were not gestures of surrender. Banzhof quickly turned to his right, toward the interior of the truck. Sudbury feared Banzhof was reaching for a weapon. Banzhof was in an elevated position and would have been able to aim and shoot Sudbury and his partners. Sudbury fired one round at Banzhof. Sudbury looked through his optics to reassess and saw Banzhof again quickly move his right. Believing Banzhof was again reaching for a weapon and fearing for his and his partners lives, Sudbury fired a second shot at Banzhof. The second shot went through the back window of the truck and Sudbury believed it shattered the glass. Banzhof quickly sped up the driveway into the garage and ASTREA reported he had crashed.

One of the other deputies broadcast shots had been fired by deputies. Sudbury did not broadcast any radio traffic during the shooting because the heavy plate vest he was wearing covered his microphone. Sudbury stayed behind the sheriff's vehicle in a position of cover and continued look up toward the house in case Banzhof reappeared and tried to shoot him and his partners. Sudbury was eventually relieved and removed from the scene by a patrol supervisor.

Investigation

The scene was secured, photographed and investigated by the San Diego Sheriff's Department Homicide Unit. All detectives' reports, crime scene investigators' reports, Body Worn Camera (BWC) and audio recordings were reviewed. All of these items were found to provide evidence which corroborated the deputies' statements. The events leading up to, and the incident itself were captured on several BWCs, which were reviewed.

The incident took place at night at a location that appears to have no street lighting. Although the deputies' voices, gunshots, and ASTREA and ABLE can be heard on the videos, visibility was low. The audio captured the deputies ordering Banzhof to put the gun down and Banzhof responding that he would, and for the deputies not to shoot. One of the deputies states he believes it was an airsoft rifle after the first shot. Several more shots in rapid succession are audible. In Sudbury's second BWC video, deputies note they can hear a car and they warn each other Banzhof is coming their way. A deputy states Banzhof has a rifle. LE1 responds "if you have to shoot do what you have to do." The BWC captures the deputies ordering Banzhof to

show his hands or be shot. An engine is heard revving while a deputy continues to give Banzhof commands. A shot is heard at 5:09:26 followed by a second shot at 05:09:31. Deputy Sudbury discusses with another deputy that it looked like Banzhof was going for the rifle and he saw Banzhof make a movement.

LE1's BWC recorded CW1 telling officers that Banzhof spit food all over her and hit her multiple times. The vehicle pursuit can be heard on LE1's BWC but Banzhof's car and driving is not visible as the Deputy's BWC is at steering wheel level. The pursuit lasted approximately two minutes.

LE2's BWC captured the call between Banzhof and CW1 while CW1 was giving her initial statement. CW1 told Banzhof to go out and speak with the officers so it "can be over with." Banzhof responded "Nope. Nothing's ever over with. If they want to (inaudible) to hell, I'll send them to hell." As directed by LE2, CW1 told Banzhof to go outside the house. Banzhof responded, "with a gun I will." LE2 relayed the information over his radio to the other deputies.

BWC footage from the other deputies on scene was reviewed. LE5's BWC lost its charge and did not capture the incident. The audio from the BWCs was consistent with the deputies' statements. Investigators spoke with neighbors following the incident. Some reported hearing gunshots but none were able to identify who fired the shots.

The ASTREA video shows the contact team staging at the bottom of Banzhof's driveway. Banzhof is seen on the video leaving his home, going to his car, pointing at the helicopter and going back in his home. Banzhof comes back out of the residence and is animated and gesturing towards the helicopter. Banzhof continues to go in and out of the home, to his car and to his backyard. He continues to gesture towards the helicopter. ASTREA airs that he appears to be intoxicated and that he appears to be drinking from a bottle. The video shows deputies and a canine approaching the home and making their way to the backyard. A deputy is heard on the radio saying that Banzhof is walking to the backyard with a rifle. The deputies leave the backyard and walk back down the driveway. Banzhof comes outside and is holding a long firearm. He fires a shot in the air. He walks around his front yard and then goes back into the home. ASTREA airs that additional shots are coming from the house. Banzhof comes out to the front yard again. ASTREA airs that the rifle appears to be an AK-47. Banzhof runs from his front porch, down the driveway towards the decline, and behind a bush out of camera view. ASTREA advises that it appears he has taken a prone position behind the bush. Someone airs "one more shot fired" over the radio while Banzhof is behind the bush. Banzhof walks back along the driveway while firing multiple rounds in the air. ASTREA was relieved by ABLE to refuel and change flight crews.

ABLE video shows Banzhof standing in his backyard holding the rifle and pointing it at ABLE. ABLE monitors and provide updates as Banzhof goes back and forth from the backyard, into the home, and out to his front porch until ASTREA returns and relieves ABLE.

The additional ASTREA video shows Banzhof backing out of his garage in dually pickup truck. Banzhof exits the car and returns holding a rifle. He gets back in the truck with the rifle and

backs down the driveway. ASTREA updates deputies that Banzhof has the rifle. Banzhof moves back up the driveway but then begins to back down the driveway again. He makes it halfway down the driveway when someone airs that shots have been fired. Banzhof accelerates up the driveway back into the garage. Banzhof later comes out of the home without the rifle. He lights a cigarette and checks his phone. Banzhof continues to go into and out of the home.

CNT negotiators called Banzhof a total of 53 times beginning at approximately 11:36 p.m. until Banzhof was taken into custody at approximately 2:26 a.m. Banzhof answered almost all the calls. Banzhof refused all requests to surrender. Deputies outside the house are also heard on the recorded calls giving Banzhof repeated commands to come outside with his hands up.

Banzhof was armed with a Ruger model 10/22 .22 caliber carbine. It was recovered from the inside of his residence in the master bedroom. The magazine inside the rifle contained 26 unexpended cartridges. Twenty-two expended .22 caliber casings were located throughout Banzhof's property. Ten casings were found in the front yard and driveway area, nine were found in the backyard and patio area, and three were found inside the home along with defects in the ceiling near each of those casings in the living room, kitchen, and dining room.

Sudbury was armed with his department-issued Colt Model M4 Carbine rifle. It was loaded with approximately 25-30 rounds in the magazine at the start of his shift. Two .223 caliber cartridge casings were collected at the scene in proximity to where Sudbury had been standing when he fired his weapon. One was collected by LE1 during the standoff and the other by investigators the next morning. Sudbury's rifle had a total of 24 unexpended .223 cartridges in the magazine, and one unexpended .223 cartridge in the rifle's chamber.

The dually pickup truck Banzhof was driving during the shooting was examined by a Sheriff's Department criminalist, who found that the defects to the rear fender were consistent with one round entering and exiting in a generally back to front and upward trajectory. The defect to the driver door was generally back to front and upward and that the apparent blood, biologic material, and paint chips were consistent with a round striking the driver's arm prior to entering the door panel along the same trajectory. The defects were consistent with having been struck with firearm projectiles. Detectives found a metal fragment inside the door consistent with the copper jacketing of projectiles, such as a .223 projectile. Although Sudbury said he heard the truck's back window shatter after he fired the second round, it was not shattered when examined and photographed.

The patrol vehicle Sudbury, LE1, and LE3 took cover behind had a defect in the windshield close to the driver side windshield wiper. There was no damage to the windshield wiper, but the glass windshield was impacted, causing cracks in a spiderweb formation centered on the bottom middle portion of the windshield. According to detectives, the defect appeared to be created by an impact upon the windshield from an elevated position due to the proximity to the windshield wiper and the absence of any defect to the windshield wiper. The windshield tested positive for copper. The projectile did not penetrate the windshield.

Banzhof was transported to Sharp Memorial Hospital. He sustained one gunshot wound to his left arm, dog bites to the left arm and chest area, and a right thigh injury from the sponge round. Banzhof's blood was drawn at Sharp Hospital. Toxicological analysis indicated he had 0.046 blood alcohol level, 5ng/ml hydrocodone and 11 ng/ml of Cannabinoids (11-Carboxy-Delta-9-THC). Banzhof was released from the hospital and booked into Central Jail on June 17, 2020.

Legal Analysis

Penal Code section 835a(b) provides that any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides that a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary, to include defending against an imminent threat of death or serious bodily injury to the officer or to another person. Penal Code section 835a(c)(1)(A).

A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person." Penal Code section 835a(c)(2). The statute provides definitions for "deadly force," "imminent" and the "totality of circumstances" in Penal Code section 835a(e)(1) – (3). "Deadly force" means 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. Penal Code section 835a(e)(1).

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 another person." Penal Code section 835a(e)(2). An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).


"Totality of the circumstances" means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." Penal Code section 835a(e)(3). In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer. Penal Code section 835a(2). 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. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(4).

A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section "retreat" does not mean tactical repositioning or other de-escalation tactics. Penal Code section 835a(d).

Conclusion

Dustin Banzhof threatened to kill his girlfriend. He led deputies on a pursuit, fired shots from his rifle, pointed it at deputies and air support, refused to put down his weapon, and failed to comply with the deputies' commands. He entered his truck with a rifle, backed down the driveway, and made sudden movements inside the cab, causing Deputy Sudbury to fear he was reaching for the rifle to shoot at them. In reviewing the circumstances, Sudbury's actions at the time of the shooting were reasonable based on the circumstances known and perceived by him at the time. Based on the totality of the circumstances, Sudbury reasonably believed that Banzhof posed an imminent threat and intended to cause death or serious bodily injury by shooting him and his partners when he revved his engine and drove his pickup truck towards the officers while armed with the rifle. Banzhof's actions also posed an imminent threat of serious bodily harm or death to his neighbors who were watching him fire off rounds throughout the night. Less lethal alternatives were not feasible or safe against the lethal threat of Banzhof's rifle. Therefore, Deputy Sudbury bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,


SUMMER STEPHAN
District Attorney

SS:gm

cc: Captain Kenneth Jones