

**LAW ENFORCEMENT EMPLOYEE-INVOLVED
CRITICAL INCIDENT REPORT**



Employer Agency: Sonoma County Sheriff's Office

Lead Agency: Santa Rosa Police Department

Injured Party: Brad Baymon

Date of Incident: August 2, 2019

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY
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I. INTRODUCTION

On August 2, 2019, Brad Baymon (hereinafter Baymon) was shot during an incident involving Sonoma County Sheriff's Deputy David Edney. The conduct leading to the incident occurred at approximately 1738 hours at the Macy's store at Santa Rosa Plaza, 800 Santa Rosa Plaza in the city of Santa Rosa. Baymon fled from Macy's. The contact leading to the shooting occurred at approximately 1740 hours on A Street, near the intersection of Morgan Street, in the city of Santa Rosa. Baymon was shot multiple times and taken to Santa Rosa Memorial Hospital for treatment. The gunshots were nonlethal and Baymon survived his injuries.

The Sheriff's Department invoked the Sonoma County Law Enforcement Employee- Involved Fatal Incident Protocol ("Protocol"). The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol an outside law enforcement agency is designated to investigate officer-involved critical incidents.

In this case, members of the Santa Rosa Police Department assumed responsibility for the investigation of the incident. Members of the Sonoma County District Attorney's Office participated in the investigation in a supporting role, in accordance with the protocol. Under the protocol the role of the Sonoma County District Attorney's Office is to review the investigation to determine if there exists any criminal liability on the part of involved parties, including the law enforcement employee(s); to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the criminal law.

Once the investigation is complete the District Attorney is required by the protocol to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreperson of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the shooting of Baymon, a statement of the applicable law, legal analysis and conclusions. This report cannot include all of the information contained in the hundreds of pages of reports, video and audio tapes, transcripts, and photographs reviewed in its preparation. However, every effort has been made to include in this report a summary of all of the relevant, material evidence gathered by the Santa Rosa Police Department over the course of its extensive investigation of this incident.

II. SCOPE OF REVIEW

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, including law enforcement employee(s).

The specific question to be resolved in this case is whether Deputy Edney's use of force was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusions.

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

III. STANDARD OF REVIEW

The District Attorney is the chief law enforcement official of Sonoma County. The District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases in the county. The District Attorney's discretion in this regard is well defined. *The California Rules of Professional Conduct, Rule 5-110*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crime Charging Standards*, a publication of the California District Attorneys Association. These standards provide the following guidelines:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

In criminal cases, the District Attorney has the burden of proving guilt "beyond a

reasonable doubt,” the highest burden of proof found in the law. A complete definition of “reasonable doubt” can be found in the Judicial Council of California Criminal Jury Instructions Number 103. A jury of twelve must vote unanimously for guilt before a conviction may be entered. When determining whether criminal charges are appropriate the District Attorney must consider all of the evidence, including evidence that supports an affirmative defense, such as a claim of “self-defense” or “defense of others.” Criminal charges are warranted only when the District Attorney determines that the evidence of guilt is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

IV. SUMMARY OF FACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusions. It is not a substitute for the volumes of reports, interviews, and other evidence from which it is derived. It is, however, an accurate summary of what the District Attorney believes the material facts in this case to be.

A. BACKGROUND INFORMATION

Brad Baymon was born May 20, 1977 in Illinois and was 42 years old at the time of the shooting. Baymon’s criminal history began in 1994 in Chicago, Illinois, with an arrest for theft of labor and/or services. Baymon was subsequently arrested on several occasions spanning from 1994 to 2000 for theft offenses and trespass and was convicted in Illinois of misdemeanor level theft in 1997. In 2001, Baymon was arrested in Richmond County, North Carolina for theft by false pretenses and convicted of a felony, and he was arrested for violating that probation in 2003. In 2002, also in North Carolina, Baymon was convicted of a felony for gaining property or services

by cheating. Between 2003 and 2005, Baymon was in Minnesota where he was arrested for scalping in on three occasions. In 2010, Baymon was arrested in Illinois for an older probation warrant, and in Maryland for misdemeanor theft. No disposition was noted for the Maryland misdemeanor. Baymon was in Oregon in 2015, where he was arrested for two counts of theft, but no disposition was noted. In January 2019, in Portland Oregon, Baymon was arrested for interfering with a police officer, resisting arrest and robbery. It was alleged that during the offense Baymon was attempting to steal computers when he was confronted by a security guard whom punched and threatened to kill. Baymon pulled away from officers when they tried to take him into custody and grabbed at an officer's gun belt. No disposition is noted for that arrest. In February 2019, Baymon was in Hillsboro, California where he was contacted for trespassing and resisted arrest. No disposition is noted for that arrest.

B. EVENTS OF AUGUST 1, 2019

On Thursday August 1, 2019, at approximately 1738 hours officers were dispatched to the Macy's store inside the Santa Rosa Plaza Mall, at 800 Santa Rosa Plaza for a report of an attempted stabbing and robbery. The Santa Rosa Plaza Mall is located at the western edge of downtown Santa Rosa, bordered by US 101 to the west, with residential neighborhoods to its north and south. The Macy's store is at the very north end of the mall.

Deputy David Edney is a ten-year police veteran and has been employed as a Sonoma County Deputy Sheriff for five years. Prior to working as a Sherriff, Deputy Edney was a Sebastopol police officer. During his tenure as a police officer Deputy Edney has held assignments that require specialized training; such as a baton instructor, Taser instructor, and a field training officer.

Holden Layton, a loss prevention detective, observed a black male adult (later identified as Baymon) enter Macy's through the north east entrance carrying a large bag. Layton observed Baymon select a shoe box and enter the men's dressing room then shortly thereafter exit the dressing room wearing a different pair of shoes. Baymon then placed the shoe box at another location in the store. After Baymon left the dressing room, Matthew Raaberg, another loss prevention detective, located the shoe box and observed that it contained Baymon's old shoes, not the new pair. Baymon passed a cash register without paying for the new shoes on his feet and exited the store through the northwest doors. Once outside the store, Layton and Raaberg confronted Baymon and identified themselves as loss prevention. As Raaberg attempted to show Baymon his loss prevention badge, Baymon reached into his right pants pocket and pulled out a fixed blade knife. Layton grabbed Baymon's

hand, but Baymon was able to free it and swung the knife at Raaberg near his neck multiple times. Layton and Raaberg jumped back from Baymon and he gathered his things and walked away. Layton and Raaberg kept their distance but watched Baymon as he left the area of the mall. Loss prevention employees called 911, reported the incident and updated dispatch as to the direction Baymon fled.

Santa Rosa Police Department dispatch broadcast the robbery and attempted stabbing and described the armed suspect as a black male adult wearing a brown jacket, khaki pants and carrying a red bag. Santa Rosa Dispatch continued to update over the Santa Rosa Police radio channel that the suspect was armed with a knife and attempted to stab a victim in the face. Location information indicated that the suspect had left the mall, was cutting through a neighborhood and would end up on Morgan Street. Additional information came over dispatch indicating that the suspect had a black knife in his right hand and that the reporting party stated that the suspect had attempted to kill the loss prevention employee.

Deputy Edney was in a distinctively marked SCSO sport utility vehicle, wearing his full Sonoma County Sheriff uniform. The uniform included his duty belt that contained his fully loaded duty pistol and a set of handcuffs. Deputy Edney also wore a duty vest that contained three additional loaded 17-round magazines, his Taser in a cross draw position, his body worn camera (BWC) and extra sets of handcuffs. Deputy Edney was not carrying a back-up weapon at the time of the incident. However, Deputy Edney had additional personal weapons in the SCSO SUV that he was driving, including a .308 rifle and a 40mm less lethal launcher. These weapons were not secured in the vehicle, but in unlocked cases in the rear compartment.

On August 1, 2019, Deputy Edney was on patrol in the city of Santa Rosa and had his police radio turned to the Santa Rosa Police Department channel so that he could be aware if any city police officers needed assistance or backup during his shift. Deputy Edney heard the information regarding the robbery and attempted assault with a knife over the Santa Rosa dispatch transmission and headed in the direction the suspect was reported to have fled. Based on the dispatch Deputy Edney knew the suspect, identified as black male adult, wearing a brown jacket with a red backpack, may be armed and had exhibited a willingness to be violent when he attempted to stab another person.

Deputy Edney located a suspect (later identified as Baymon) with a similar description walking in an area approximately two blocks away from the Macy's, in the direction the suspect fled. When Deputy Edney arrived on the street, Baymon changed direction and started walking toward the Sheriff vehicle. Deputy Edney parked in the street, exited his vehicle leaving the keys in the ignition and the

driver's side door open. Immediately the deputy issued his first command for Baymon to get on the ground. Instead, Baymon walked past Deputy Edney, looked in his direction, and kept going. Deputy Edney continued giving Baymon commands to get on the ground, which were ignored, so the deputy pulled his Taser and warned Baymon that he would be tased. Baymon kept walking away and Deputy Edney deployed the Taser, but the probes hit Baymon's jacket and had no effect. Realizing that Baymon's jacket was too thick, and remembering that Baymon was wearing a shirt under the jacket, Deputy Edney ran around Baymon to get a better firing position, switched his Taser to his strong hand and fired again. This time the probe hit Baymon, causing him to momentarily freeze, but he regained control almost immediately and kept moving.

Baymon's movement put him in a position between the Sheriff's vehicle and the deputy.

Deputy Edney dropped his Taser, realizing his only option at that point was a contact tase, which was unsafe given the report that Baymon was armed and had already acted violently. Baymon ran toward the unlocked, running Sheriff's vehicle, jumped into the driver's seat and shut the door. Deputy Edney grabbed the door and there was a short struggle for the door but Deputy Edney was able to open it as Baymon lost grip. After losing his grip, Baymon turned away from Deputy Edney toward the passenger side.

As Baymon turned away in the vehicle and started making movements, Deputy Edney pulled out his service weapon and ordered Baymon out of the car. Instead of exiting the vehicle, Baymon turned toward the deputy, grabbed the door and shut it again. After shutting the door, Deputy Edney saw Baymon grab the shift lever, and at that point the deputy opened fire. Deputy Edney fired his weapon into the car four times in very rapid succession and Baymon slumped in the driver's seat. Deputy Edney held Baymon at gunpoint until backup arrived. After backup arrived, Deputy Edney demanded the knife, and Baymon made a movement and tossed it onto the car's floorboard.

A knife was recovered from the scene that Baymon had tossed onto the floorboard prior to being removed from the vehicle by law enforcement. Deputy Edney's assigned Taser and its attached wires were recovered from the sidewalk where it was dropped. Taser darts were removed from Baymon and his clothing. The darts were located on the back of his jacket, the front of his plaid shirt and one dart was removed from Baymon's chest. An expended bullet was also removed from the interior back of Baymon's jacket, near the arm-hole area. An expended bullet was removed from Baymon's back at Santa Rosa Memorial Hospital.

C. CONTENTS OF THE POLICE VEHICLE

The Sheriff's vehicle front driver's window was broken, the engine was running, the keys were in the ignition and the driver's door open. All the doors on the vehicle were unlocked. Deputy Edney was carrying a Glock 17, 9 millimeter semi-automatic firearm with an attached flashlight on his person and had a rifle and less lethal weapon in the vehicle. The rear cargo area of the vehicle contained a soft sided gun case with a Black Alstac 40 millimeter less lethal launcher. A hard sided gun case contained a .308 caliber rifle with a scope, tactical rifle strap and a separate magazine loaded with 14 .308 cartridges.

The cab of the vehicle contained the MDC, a law enforcement mobile data computer containing specialized information and programs. The cab also contained a police scanner and radio. The rear cargo area of the vehicle also contained clothing with the Sheriff's department insignia, including a tan bullet proof vest, a Sonoma County Sheriff's jacket, a khaki Sonoma County Sheriff's shirt, tactical uniform pants and shirt, a green fleece jacket and a yellow reflective Sheriff vest. Also in the cargo area were a black ballistic shield with "Sheriff" emblazoned on it as well as a black spike strip system.

V. STATEMENT OF THE LAW

The sole legal issue to be resolved is whether Deputy Edney acted unlawfully when he shot Baymon because the force he used was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose; or to state it another way, whether Deputy Edney acted lawfully because the shooting was reasonably necessary under the totality of the circumstances.

The United States Supreme Court has routinely recognized that a peace officer has the legal authority to detain an individual upon a reasonable suspicion that the person to be detained has engaged in criminal activity.¹ A peace officer has the authority to make an arrest of an individual if the facts presented rise to the level of probable cause to believe a crime has been committed, and an individual has a duty to submit to such lawful arrest.² A peace officer 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.³ The officer will not be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to

¹ *United States v. Sokolow* (1989) 490 U.S. 1; *Terry v. Ohio* (1968) 392 U.S. 1.

² The authority for the officer and duty of the arrestee can be found in Penal Code sections 834 and 834a

³ See Penal Code Section 835a; *People v Hughes* (1951) 107 Cal. App. 2d 487, 494.

prevent the escape, or to overcome resistance.

In addition to specific authority provided to law enforcement officers when conducting a detention or an arrest, an officer always has the same protection of the law of self-defense as any other citizen to use reasonable force in self-defense or the defense-of-others.⁴ This defense is available to all people within the United States, including law enforcement officers, regardless of whether they are attempting to make a lawful arrest.

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears necessary to the person claiming the right reasonably believed he or others were in imminent danger of great bodily injury or death. Any person may use all the force that he reasonably believes to be necessary to prevent injury to himself or others provided that no more force than was reasonably necessary to defend against the danger was applied.⁵

While review of a person's conduct after the fact is made calmly and deliberately in a process of 'careful balancing,' the courts have recognized that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving. The law does not render a person's conduct criminal because he might have chosen "less lethal" means to ensure his own survival. If deadly force is reasonable and justified in response to an imminent threat of harm, all hypothetical questions about alternative courses of action are irrelevant.⁶

Use of deadly force in the line of duty is justified provided that all the following factors are present: the person is a peace officer; the killing was committed while performing a legal duty; the killing was necessary to accomplish that lawful purpose; and the peace officer had probable cause to believe that the person killed posed a threat of serious physical harm, either to the peace officer, or to others.⁷ In those situations, the killing is justified and it falls to the prosecution to prove beyond a reasonable doubt that the killing was *not* justified.⁸

When deciding whether an officer's beliefs were reasonable, one must consider all of the circumstances as they were known to and appeared to him at the time, and consider what a reasonable person in a similar situation with similar knowledge

⁴ See Penal Code Sections 692-694

⁵ See CALCRIM 505

⁶ See *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912.

⁷ See CALCRIM 507; Penal Code Sections 196, 199.

⁸ See CALCRIM 507, Penal Code Sections 189.5, 199.

would have believed at the time, not with the benefit of 20/20 hindsight. If the officer's beliefs were reasonable, the danger does not need to have actually existed.⁹

Penal Code Section 196 was repealed December 31, 2019 and Penal Code Section 835a enacted in its place. Penal Code Section 835a took effect January 1, 2020 and added the requirement of *imminent harm*, an element previously required only for killings committed outside the course of law enforcement duties. The 2020 law requires that before a peace officer may use deadly force in the line of duty the threat of death or serious bodily injury must be imminent, which is defined as the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to the officer or another person.¹⁰ The requirement of imminent harm is not applicable to the current inquiry based on the state of the law at the time of the incident, but based on the totality of the circumstances it does not materially change the analysis or the outcome in this case.

Finally, law enforcement may also use deadly force to apprehend a person fleeing from arrest after committing a felony. The law in effect through 2019 required that the officer have probable cause to believe that the fleeing suspect poses a threat of physical harm to either the officer or others.¹¹ The 2020 amendment to Penal Code Section 835a added to the fleeing felon rule.¹² Under Penal Code Section 835a, a peace officer is only justified in using deadly force when apprehending a fleeing felon if the following are true: the underlying felony was one that threatened or resulted in death or serious bodily injury; the officer believes that the person will cause death or serious bodily injury if not immediately apprehended; and if feasible, the officer must identify themselves and warn that deadly force may be used unless there are grounds to believe the person is aware that such force may be used. For purposes of this analysis the law in effect during 2019 will be applied, though based on the totality of the circumstances, the amendment to the fleeing felon statute does not materially change the analysis in this case or the outcome.

VI. DISCUSSION

Baymon committed multiple criminal offenses that justified law enforcement intervention in the form of investigation, detention, and arrest. Baymon committed robbery, theft, and assault with a deadly weapon upon at least one victim. Deputy Edney located Baymon in the direction the suspect had fled, two blocks from the

⁹ *Terry v Ohio* (1968) 392 U.S. 1, 20-22; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-83.

¹⁰ See Penal Code Section 835a(c)(1) – (2); 835a(e)(2).

¹¹ Penal Code section 196; *Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.

¹² See Penal Code Section 835a(c)(1)(B).

scene of the robbery and assault at the downtown Macy's store, minutes after the crime. Baymon appeared very similar to both the physical description and the clothing and bag description given to dispatch. It was late afternoon, full daylight, and nothing stood between Deputy Edney and Baymon to impede their view of one another. Deputy Edney, listening to the information as it was broadcast, knew that a robbery had occurred, that a weapon was used, and that Baymon attempted to stab the victim more than one time with a knife.

Deputy Edney had reasonable suspicion to detain Baymon based on the crimes and the suspect's physical description when he encountered him in the heart of a residential neighborhood. Deputy Edney was well within the scope of his duties as a law enforcement as he had a duty to investigate as well as prevent any potential further violent criminality. Once Deputy Edney spotted Baymon and exited his patrol vehicle, events unfolded extremely rapidly.

Aware that Baymon was armed and had already committed a violent crime with a weapon, Deputy Edney initially unholstered his firearm but then reasonably decided to use his Taser because he did not see a visible weapon at that time. Deputy Edney attempted to detain Baymon with voice commands, while pointing the Taser at him. Only after Baymon failed to comply with voice commands did Deputy Edney deploy his Taser. Baymon again failed to comply even after the Taser probes were deployed the first time. Instead, Baymon changed direction and walked directly past Deputy Edney toward the patrol car. Realizing that Baymon's clothing may have prevented the probes from being effective, Deputy Edney again made a reasonable decision and moved to a better position in front of Baymon and deployed the Taser once again, this time making contact with Baymon. Deputy Edney watched as Baymon stiffened, an action Deputy Edney was familiar with occurring after a successful Taser strike, but instead of complying, Baymon simply momentarily paused and kept moving. Baymon's movement put him between Deputy Edney and the patrol car.

Deputy Edney knew that Baymon had committed one violent crime and believed he was capable of committing another. Deputy Edney was aware that Baymon had a knife and was concerned that he may have yet another weapon that was hidden on his person or in his packages. Baymon was ignoring commands under threat of the Taser as well as at gunpoint. Deputy Edney honestly and reasonably believed that Baymon could kill him or someone else. Then Baymon took the additional step to run into Deputy Edney's patrol car, which had the keys in it and the engine running. Deputy Edney saw Baymon make a movement toward the gear shift, turn, close the door, and then reach toward the gear shift again. At that moment, the Sheriff's vehicle itself was a weapon and it contained multiple other weapons and Sheriff's identifying clothing.

When Baymon entered the patrol car, Deputy Edney and he briefly struggled over the patrol car door. Deputy Edney attempted to get the door open so that he could pull Baymon out of the vehicle, but Baymon was able to get the door shut. The totality of the circumstances at that moment were: Baymon's already violent behavior; the use of the weapon in the robbery; his failure to comply; the vehicle itself was a deadly weapon; and the vehicle contained additional deadly weapons. Based on all the circumstances Deputy Edney fired his service revolver into the vehicle to stop Baymon from leaving the scene and putting the public in further danger.

Deputy Edney was in the conduct of his lawful duties when he attempted to stop and detain Baymon for a robbery and assault with a knife that had occurred only minutes before the contact. Deputy Edney's concern was not only for himself but for the public at large. Baymon had proven himself to be willing to commit a violent crime, and the acquisition of the sheriff's vehicle and its contents not only provided him the opportunity to flee, but also to endanger the lives of anyone with whom he may come into contact. There were additional weapons and ammunition in the vehicle that were in unlocked and accessible cases. Should Baymon have been permitted to leave in the Sheriff's vehicle it was reasonable to believe that further potentially deadly violence would be the result. Deputy Edney had attempted less lethal tactics to stop Baymon and gain his compliance, including voice commands and the use of his Taser, to no avail.

It became clear to Deputy Edney that Baymon was an imminent threat to not only himself but the public at large when he failed to comply and then forcefully took possession of the patrol vehicle and its contents. The patrol car was in a residential neighborhood and the freeway was easily accessible. Baymon exhibited violent behaviors when he was thwarted at the department store, using a weapon against loss prevention. An objectively reasonable officer in Deputy Edney's position would believe that Baymon posed a threat to any person that attempted to interfere with Baymon's objectives. When Baymon proved that he was not going to submit to detention and exponentially increased the imminent danger he posed to others by getting into the patrol car, Deputy Edney then used lethal force.

VII. CONCLUSION

Based on the legal principles and facts discussed above, Sonoma County Sheriff's Deputy David Edney was legally justified in using force in this instance. He acted lawfully and the force used was reasonable under the totality of the circumstances. He reasonably believed that Baymon was prepared to and would use lethal force

against him or another member of the community. Deputy Edney lawfully acted in self-defense, defense of others, and to prevent the flight of a dangerous felon when he used his firearm. Accordingly, this office finds that criminal charges are neither warranted nor supported by the evidence.

Signature redacted for Security reasons.

4/21/20

Jill R. Ravitch, District Attorney