

# *Yuba* COUNTY

OFFICE OF THE DISTRICT ATTORNEY



*PAX PER JUSTITIA*

## **Report on the Investigation into the Shooting of Howard Barton on December 29, 2023**

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December 2024

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# INVESTIGATION OF OFFICER INVOLVED SHOOTINGS

## BACKGROUND

Pursuant to Government Code section 26500, the district attorney is the public prosecutor, responsible for initiating and conducting on behalf of the People all prosecutions for public offenses. Anytime a person shoots another person, the district attorney analyzes the facts of the case to determine whether the shooter should be held criminally liable for their actions.<sup>1</sup>

When the shooter is a peace officer exercising the power of the state, the transparency of the investigation and the charging decision are essential for accountability in our democracy. We ensure this in Yuba-Sutter by providing an independent investigation of every incident and a transparent explanation of why charges were or were not filed.

Every local law enforcement agency in Yuba and Sutter Counties has committed to an independent, professional, and transparent investigation of officer-involved shootings (“OIS”) by their members. The Yuba-Sutter Officer-Involved Shooting and Critical Incident Investigation Team (“OIS Team”) was created to provide independent investigations of every officer-involved shooting that occurs in either county.

The OIS Team is led by the Chief Investigators for the Yuba and Sutter County District Attorneys. The Team is made up of experienced peace officers from each of the member agencies. The multi-agency makeup and independent leadership of the OIS Team ensures the investigation is always done by impartial professionals from outside the involved officer’s agency.

Once an investigation is complete, the OIS Team refers it to the district attorney with jurisdiction over the incident. The district attorney does a legal analysis of the facts under California law, deciding if anyone should be held criminally responsible for their actions. The process culminates with the district attorney issuing a public report summarizing the facts and legal analysis, explaining why charges were or were not filed.<sup>2</sup>

Examining law enforcement agency policies, tactics, or procedures is beyond the scope of the district attorney’s legal analysis.

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<sup>1</sup> Pursuant to California Assembly Bill 1506, the California Department of Justice is required to investigate and review all incidents of an officer-involved shooting resulting in the death of an unarmed civilian.

<sup>2</sup> When criminal charges are filed against any of the involved parties, the District Attorney will not release the report or evidence until after the criminal case is over. We do this to protect the right of the involved parties to a fair trial with an impartial jury.

## PRIVACY STATEMENT

To provide transparency, the identities of citizens and peace officers that were involved in the OIS or critical incident are made public.

The names and most identifying information of witnesses that were not directly involved in the incident are redacted. The public interest in such information is limited because it is not necessary to gain an understanding of the incident or the charging decision. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy and readability, the witnesses will be indexed as follows:

- Witness 1 (W-1), a relative of Howard Barton who called 911
- Witness 2 (W-2), a relative of Howard Barton who saw the OIS

## EXECUTIVE SUMMARY

On December 29, 2023, Yuba County Sheriff's Deputy Jose Roque went to a residence on the 5400 block of Feather River Boulevard in Olivehurst, California, for a report of a man in need of medical aid for a cut to his leg. When Deputy Roque reached the porch of the residence, Howard Barton came out of the house holding a meat cleaver in one hand and a hammer in the other. Deputy Roque backed away and tried to deescalate the situation. Mr. Barton ignored all commands and charged Deputy Roque, with the hammer raised and ready to strike. Deputy Roque shot Mr. Barton once in the right thigh.

The OIS Team investigated the incident. The Yuba County District Attorney declined to prosecute Deputy Roque because it was clear he fired his duty weapon in self-defense.<sup>3</sup> This report is the final step in the District Attorney's review of the OIS of Mr. Barton. The report presents the analysis of why criminal charges were not brought against the involved officer.

## SUMMARY OF THE INCIDENT

### Background – Involved Citizen(s)

Howard John Barton was 65 years old on December 29, 2023. Mr. Barton, a white male, weighed approximately 150 pounds, and was approximately 5 foot, 11 inches tall. He resided in a house on the 5400 block of Feather River Boulevard with his relative, W-2.

Mr. Barton has a long criminal record dating from 1978 through 2022, including six felony convictions and over a dozen misdemeanor convictions. Many of his prior convictions involve possession, transportation for sale, or being under the influence of methamphetamine. Mr. Barton also has a history of mental illness for which he was prescribed antipsychotic medications.

On December 29, 2023, Mr. Barton had been off his antipsychotic medications for months. Mr. Barton had consumed approximately five times his regular dosage of methamphetamine and was still under the influence at the time of the incident.

### Background – Involved Law Enforcement Officer(s)

Deputy Jose Roque has been a peace officer since 2013, when he graduated from the Police Academy in San Diego. Deputy Roque worked for the San Diego County Sheriff's Office and the Ridgecrest Police Department before becoming a deputy for the Yuba County Sheriff's Office ("YCSO") in May of 2022.

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<sup>3</sup> The District Attorney charged Howard Barton with assaulting a peace officer with a deadly weapon in violation of Penal Code section 245(c). Mr. Barton pled no contest to the charge on November 6, 2024. Yuba County Superior Court Judge Benjamin sentenced Mr. Barton on December 16, 2024, to serve 4 years in state prison.

On December 29, 2023, Deputy Roque was working a regular day shift from 7:00 a.m. to 7:00 p.m., patrolling the unincorporated areas of Yuba County. He was wearing a YCSO uniform with a gold-colored badge on his chest, department patches on his shoulders, and the word “SHERIFF” stitched in large yellow letters on the front and back of his vest. Deputy Roque was equipped with a 9mm Glock pistol, two spare magazines, a Taser, pepper spray, hand cuffs, a radio, and a collapsible baton. Deputy Roque was driving a marked YCSO patrol vehicle and wearing a body-worn camera (“BWC”) on his vest.

## Officer-Involved Shooting

On Friday, December 29, 2023, at approximately 2:50 p.m., YCSO Dispatch received a 911 call from W-1, requesting an ambulance because his relative had injured himself and was bleeding from his groin. Fire and ambulance were dispatched. The call for medical aid was entered into the computer-aided-dispatch system (“CAD”) as *“911 caller, medical for male w/laceration to the leg, unk what happened to him.”*

Deputy Jose Roque was near the residence on an unrelated call when he saw the request for medical aid on his CAD screen. At 2:51 p.m., Deputy Roque radioed dispatch, volunteering to go to the medical aid call.

Deputy Roque arrived at 2:52 p.m. and began looking for the injured male. He contacted W-2 in the driveway. W-2 said Mr. Barton was on the porch and had thrown a cleaver. They began walking together up the narrow path toward the house. (See Figure 1.)

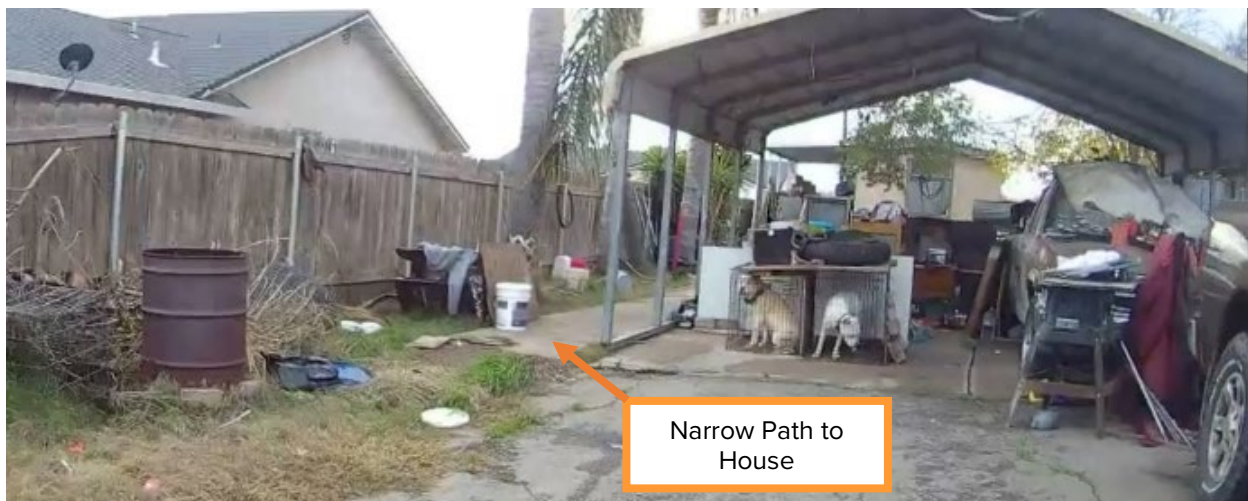


Figure 1 – Still image taken from Deputy Roque’s body-worn camera (“BWC”) showing the driveway, carport, and walkway to the house.

When they reached the stairs to the porch, Deputy Roque saw Mr. Barton exit the house onto the porch. Deputy Roque immediately noticed his eyes were wide and his pupils dilated. Mr. Barton looked at him and said, *“The cops are here,”* before stepping back inside. Based on his appearance and demeanor, Deputy Roque suspected Mr. Barton was under the influence of a controlled substance or having a mental episode.





Figure 2 – Still image from Deputy Roque's BWC showing Mr. Barton on the porch. (Inset photo enlarged)

A second later, Mr. Barton came back out holding a meat cleaver in his right hand and a hammer in his left. Mr. Barton was looking directly at the deputy and moving toward him with the weapons raised. (See Figure 2.)

Deputy Roque began backing up and radioed dispatch for emergency help, *"send me another unit; elderly man with an axe; send me units code 3."* W-2, who was backing up with the deputy, said that Mr. Barton was having a mental breakdown. Deputy Roque drew his Taser and continued to back up, trying to deescalate the situation, saying *"Get Back! You're okay. You're alright brother. You're okay."*

Mr. Barton descended the stairs, holding the cleaver and hammer and ignoring the deputy's repeated orders to *"get back!"* Mr. Barton continued towards Deputy Roque with the weapons at the ready. (See Figure 3.) Deputy Roque continued to back away and give orders to *"get back!"* W-2 also yelled multiple times, *"Howard, get back!"*



Figure 3 – Still image taken from Deputy Roque's BWC showing Deputy Roque pointing a Taser at Mr. Barton, who is walking toward him with a hammer and cleaver held in front. (Inset photo enlarged)

Deputy Roque realized that backup had not arrived, and he was facing a deadly force situation. Mr. Barton was clearly ignoring his commands and continuing to walk toward him with the weapons held ready. He also knew he was nearing the end of the walkway, where the driveway opened to the street. He knew that W-2 was directly behind him, and that Mr. Barton would also have free access to Feather River Boulevard (and the public) if he got past Deputy Roque. Deputy Roque believed that if the Taser missed or was ineffective, it would be too late to stop Mr. Barton from hitting him with the cleaver or hammer. Deputy Roque was afraid that Mr. Barton was going to attempt to hit him with the hammer or cleaver, potentially causing great bodily injury or even death.

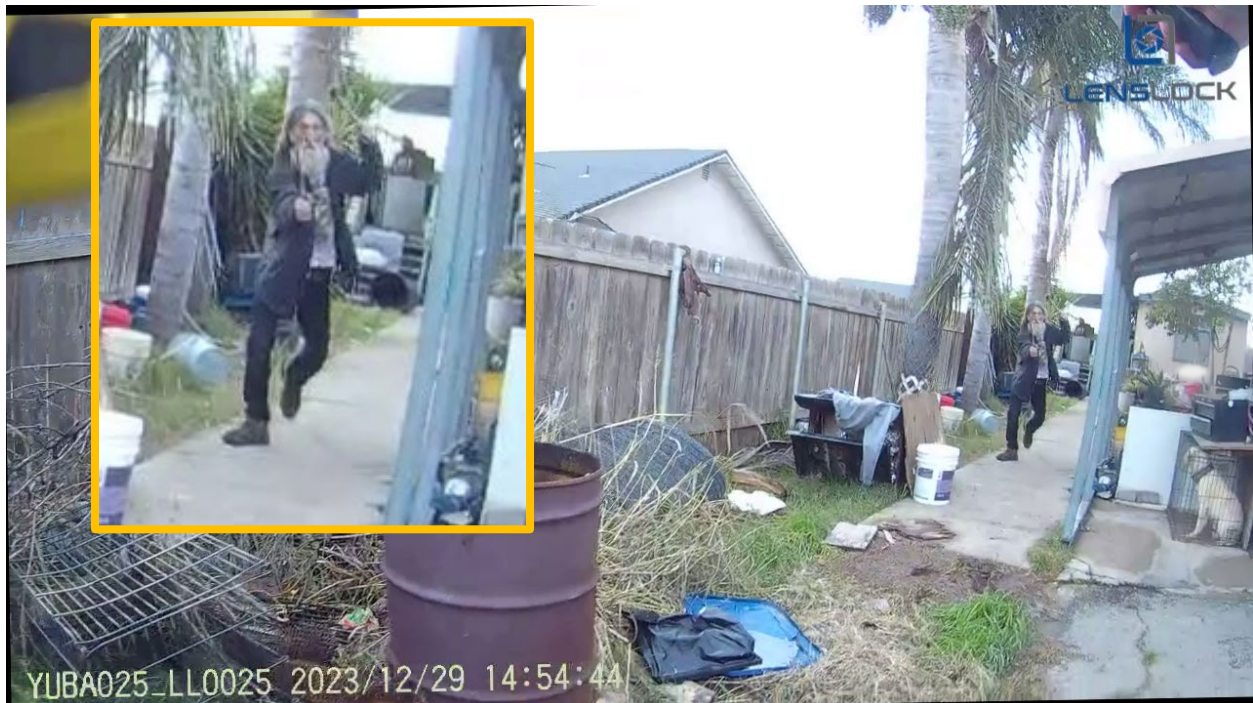


Figure 4 – Still image taken from Deputy Roque’s BWC showing Deputy Roque pointing his Glock duty weapon at Mr. Barton (top right), just as Barton began his charge with a hammer held back ready to strike. (Inset photo enlarged)

Deputy Roque updated dispatch, *“He has some sort of mental issue; he’s still coming towards me.”* Roque drew his Glock pistol, and yelled at Mr. Barton, *“Stand back! You’re gonna get shot! You are going to get shot!”* W-2 also yelled, *“Howard, don’t do it!”*

Deputy Roque saw something in Mr. Barton’s eyes that made him think he was about to run. Just at that moment, he saw Mr. Barton raise the hammer above his head and quicken his pace. (See Figure 4.) Both Deputy Roque and W-2 believed Mr. Barton was going to assault Deputy Roque with the weapon. At 2:54 p.m., Deputy Roque, believing his life was in danger, fired his duty weapon once. Only 45 seconds expired between Deputy Roque seeing Mr. Barton on the porch and firing the single shot.

Mr. Barton, hit in the leg, twisted around and fell to the ground. (See Figure 5.) After the shooting, Deputy Roque backed up toward a position of cover and radioed dispatch



*“shots fired”* and *“subject down.”* Deputy Roque held Mr. Barton at gunpoint, telling him to stay down.

YCSO Sergeant Tammy Pecsí was the first backup unit on scene, arriving at 2:56 p.m. Sergeant Pecsí and Deputy Roque approached Mr. Barton. Sergeant Pecsí pulled him up to his knees and moved him away from the hammer and cleaver that were on the ground. She also radioed dispatch to send in medical personnel. Deputy Roque and



Figure 5 – Still image from Deputy Roque’s BWC showing Mr. Barton on the ground after being shot.

Sergeant Pecsí began administering first aid. Emergency medical personnel arrived at 2:57 p.m. and took over medical care.

Mr. Barton was transported to Adventist-Rideout Hospital by Bi-County Ambulance. There he was treated for a single gunshot wound to his right thigh and a self-inflicted laceration.

## INVESTIGATION

### OIS Team Response

YCSO personnel secured the scene and requested the Yuba-Sutter Officer-Involved-Shooting and Critical Incident Investigation Team (“OIS Team”) respond to investigate the incident. Yuba County District Attorney Chief Investigator Brandt Lowe arrived at the scene to assume the investigation at 3:21 p.m. Other members of the OIS Team followed and began processing the scene.

### Scene Processing

Investigators from the OIS Team processed the scene, looking over the driveway, walkway, and porch, where all the events appeared to have taken place.

Personnel collected a single fired 9mm cartridge casing from the driveway, a meat cleaver and hammer from the walkway (see Figure 6), and Barton's clothing that was left behind by the emergency medical personnel. Personnel also took photos and scans before releasing the scene late in the evening.



Figure 6 – Photo taken by OIS Team personnel of meat cleaver and hammer before they were collected as evidence.

## Witness Interviews

OIS Team investigators canvassed the neighborhood for witnesses, determining that W-2 was the only witness to see the incident. W-2 cooperated with the investigation and gave a full statement to Yuba City Police Detective J. Thornton.

W-2 explained Mr. Barton had “*mental issues*” and had been threatening to harm himself a few days prior. The issues seemed to have resolved, but then “out of nowhere” around 2:50 p.m. on December 29, 2023, he approached her on the porch holding a meat cleaver and told her he had harmed himself. She couldn’t see any injuries, but she screamed, and W-1 called 911.

W-2 saw Deputy Roque arrive and opened the gate to walk out to him. As she walked out, Mr. Barton yelled and threw the cleaver into the backyard. W-2 went out and spoke with the deputy. She walked back up to the house with the deputy when Barton “*popped up*” on the porch with the cleaver.



Mr. Barton came down from the porch holding the cleaver at eye level. She said he was walking “*funny*” with the cleaver raised up, ignoring the deputy’s orders. She and the deputy kept backing away from him.

Just before the shooting, W-2 turned to run towards the deputy’s patrol vehicle. Before she ran, she saw Mr. Barton raise the cleaver above his head and she believed he was going to throw it at the deputy. She heard one shot and remained at the patrol vehicle.

## Involved-Officer Processing

Based on standard investigative procedures, Deputy Roque was transported to a secure location for processing. At 3:40 p.m. Investigator B. Beecham from the Sutter County District Attorney’s Office photographed Deputy Roque and collected his duty weapon and magazines. Investigator Beecham also performed a round count, confirming that Roque was one round short of the 52 rounds he normally carried. (See Figure 9.)



Figure 9 – Photograph taken by Investigator Beecham of Deputy Roque’s duty weapon, magazines, and 51 Hornady 9mm cartridges.

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## Involved-Party Interviews

### Howard Barton

Sutter County Sheriff's Detective H. Thiara interviewed Howard Barton at the Sutter County Jail just before noon on January 2, 2024. Mr. Barton waived his rights and agreed to speak with the detective. The interview was recorded.

Detective Thiara asked Mr. Barton to explain what happened on December 29, 2023. Mr. Barton told Thiara that he had harmed himself because he had stopped taking his medication. When the deputy arrived, Mr. Barton was trying to leave to go to the church to get the pastor to pray for him. He saw the deputy and heard his commands to stop, but ignored him because he wanted to go to the church. Mr. Barton was trying to "sneak past" the deputy when he was shot. He admitted he was holding the meat cleaver but denied any intent to hurt the deputy.

Mr. Barton also admitted smoking methamphetamine the day before the incident. He said he quit meth for years before starting again about a week before the incident. He normally only takes 3 to 4 puffs of meth but had taken 25 to 30 puffs the day before and was still under the influence during the incident.

### Deputy Jose Roque

Sutter County District Attorney Investigator David Wilkins interviewed Deputy Roque on January 4, 2024. Deputy Roque waived his rights and agreed to answer questions. The interview was recorded.

Deputy Roque explained, when he arrived on scene, his goal was to locate the injured person and provide medical aid. When he reached the stairs to the porch, he saw Mr. Barton about 15' from him. He immediately noticed that Mr. Barton's eyes were wide, and his pupils were dilated. Mr. Barton looked at Roque and said, "*The cops are here.*" Deputy Roque noticed that Mr. Barton had a hammer in one hand and a meat cleaver in the other. Deputy Roque believed that Mr. Barton was either high on drugs or having a mental episode.

Deputy Roque immediately began backing away from the porch, staying calm and hoping to deescalate the situation. Deputy Roque told Investigator Wilkins that Mr. Barton looked right at him and started walking down the stairs towards him. Deputy Roque started issuing commands and talking to Mr. Barton. He also drew his Taser and pointed it at Mr. Barton, hoping to deter him from continuing forward. Although Mr. Barton continued to look right at Roque, he ignored his commands and kept walking forward.

Deputy Roque remembered telling dispatch that the old man had an axe. He knew it was a meat cleaver, but in the moment the word escaped him.

As he neared the street and saw that Mr. Barton was ignoring his commands and the threat of the Taser, he thought to himself, "*This is not good.*" He could hear W-2 behind

him. He realized he was facing a deadly force situation alone and that if he tried the Taser and there was any mistake or malfunction he could “get hacked” with the meat cleaver or hit with the hammer. That is why he decided to draw his firearm.

Deputy Roque saw Mr. Barton lift the hammer up over his shoulder as if he was ready to strike with it. He yelled at Mr. Barton something to the effect of, “*Stop or you’re going to get shot.*” Deputy Roque saw a change in Mr. Barton’s eyes that made him think he was going to run. The next second, Mr. Barton began to “*sprint at me with the hammer up in the air.*” In that moment, Deputy Roque believed he “*had to shoot him,*” to protect himself from imminently losing life or limb, and to stop Mr. Barton from being able to reach W-2 or the public.

Deputy Roque remembered firing one round at Mr. Barton and seeing him twist around and fall to the ground. He could no longer see the cleaver or hammer but had heard a “*clank*” on the ground and believed Mr. Barton had dropped them. Deputy Roque maintained his distance and tried to keep Mr. Barton calm while he waited for backup. After Sergeant Pecsí arrived, he helped render aid until medical personnel took over.

## **Review of Video Evidence**

Deputy Roque’s BWC was activated and recorded the entire incident. The video corroborated the statements given by W-2 and Deputy Roque, clearly showing that Mr. Barton ignored the deputy’s commands, advancing on the deputy and W-2 with a deadly weapon in each hand. It also showed Mr. Barton raise the hammer above his head and quicken his pace just before Deputy Roque fired the shot.

## **Forensic Firearm Analysis**

OIS Team members sent the single fired cartridge casing and Deputy Roque’s duty weapon to the Bureau of Forensic Services for the Department of Justice.

Senior Criminalist K. Wallace test-fired a cartridge in the lab with Deputy Roque’s duty weapon. She then microscopically compared the test-fired cartridge casing to the fired cartridge casing collected from the scene. Based on agreement of individual characteristics of the firing pin aperture shear marks, firing pin impressions, breech face impressions, and chamber marks, Criminalist Wallace identified the fired cartridge casing from the scene as having been fired by Deputy Roque’s duty weapon.

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## LEGAL STANDARD

This section outlines the legal standards and rules applicable under California criminal law in this case.

### Assault with a Firearm

An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (Pen. Code § 240). An assault committed with a loaded firearm upon another person is a more serious crime punishable as a felony. (Pen. Code § 245(a)(2).)

To establish assault with a firearm, the People must prove that the defendant: (1) did an act with a loaded firearm that by its nature would directly and probably result in the application of force to another person; (2) the defendant did that act willfully; (3) when the defendant acted, he or she was aware of the facts that would lead a reasonable person to realize that his or her act would directly and probably result in the application of force to a person; (4) when the defendant acted, he or she had the present ability to apply force to a person; and (5) the defendant did not act in self-defense or defense of another. (CALCRIM 875, *People v. Golde* (2008) 163 Cal.App.4th 101.)

Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain an advantage. (Pen. Code § 7, *People v. Lara* (1996) 44 Cal.App.4th 102, 107.)

### Self-Defense

The use of deadly force, including an assault with a firearm, is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide, attempted homicide, or assault with a deadly weapon. (Pen. Code § 199; *People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 744.) When a person, charged with an assaultive crime, claims self-defense, the prosecution must prove beyond a reasonable doubt that the offense was not committed in self-defense. (*People v. Winkler* (2020) 56 Cal.App.5th 1102, 1167.)

Penal Code section 835a sets forth the law pertaining to when a peace officer is justified in using deadly force upon another person. Under section 835a, an officer may use deadly force only when the officer “reasonably believes, based on the totality of the circumstances, that such force is necessary”: (1) “to defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or (2) to apprehend a fleeing person who has committed a felony “that threatened or resulted in death or serious bodily injury,” and the officer “reasonably believes that the person will cause death or serious bodily injury” if not immediately apprehended. (Pen. Code, § 835a, subd. (c)(1); see Pen. Code, § 835a, subd. (a)(2) [peace officers may lawfully use deadly force “only when necessary in defense of human life”]; see *People v. Randle* (2005) 35 Cal.4th 987, 994 [self-defense arises when a person actually and reasonably believes in the

necessity of defending against imminent danger of death or great bodily injury], overruled on other grounds by *People v. Chun* (2009) 45 Cal.4th 1172.)

To determine 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.” (Pen. Code, § 835a, subd. (a)(2); *People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630 [“only that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified” and “deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury”].)

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. (Pen. Code, § 835a(e)(2); see *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305-1306 [imminent peril is “immediate and present” and “must be instantly dealt with”; it is not prospective or even in the near future].)

“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. (Pen. Code, § 835a(e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department policies may be used when evaluating the conduct of the officer. However, when an officer’s use of force is evaluated, it must be considered “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.” (Pen. Code, § 835a(a)(4); accord, *Graham v. Connor* (1989) 490 U.S. 386, 396-397 [“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”]; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed]; *People v. Bates* (2019) 35 Cal. App.5th 1, 9-10 [knowledge of another person’s prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].)

Self-defense also has a subjective component. (*Humphrey, supra*, 13 Cal.4th at p. 1082.) The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.)

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## Burden of Proof

A prosecutor bears the burden of proving a criminal defendant's guilt beyond a reasonable doubt. (Pen. Code, § 1096.) Where an investigation is complete and all of the evidence is available for review, prosecutors should file charges only if they believe there is sufficient admissible evidence to prove the charges beyond a reasonable doubt at trial. (See, e.g., Nat. Dist. Attys. Assn., National Prosecution Standards (3d ed. 2009) Part IV, § 2 pp. 52-53; United States Department of Justice Manual § 9-27.220; Melilli, Prosecutorial Discretion in an Adversary System (1992) B.Y.U. L.Rev. 669, 684-685 [surveying ethical standards used in the exercise of charging discretion by prosecutors]; accord, *People v. Catlin* (2001) 26 Cal.4th 81, 109 ["A prosecutor abides by elementary standards of fair play and decency by refusing to seek indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt," quotation and internal quotation marks omitted]; *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1374 [explaining that a prosecutor may have probable cause to charge a crime but reasonably decline to do so if they believe there is a lack of sufficient evidence to prove the charge beyond a reasonable doubt at trial]; cf. Rules Prof. Conduct, Rule 3.8(a) [prosecutor should not initiate or continue prosecution of charge that is not supported by probable cause].)

Further, the prosecution has the burden of proving beyond a reasonable doubt that an assault is not justified. It is not a criminal defendant's burden to prove that the force was necessary or reasonable. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384; see *People v. Breverman* (1998) 19 Cal.4th 142, 156 [when defendant claims self-defense or defense of others, or there is substantial evidence supportive of defense, the jury will be instructed that the prosecutor bears the burden of disproving this defense beyond a reasonable doubt].) Thus, in an officer-involved shooting, the prosecution 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.

## LEGAL ANALYSIS

The OIS Team conducted an independent investigation of the shooting of Howard Barton on December 29, 2023. The Yuba County District Attorney's Office has analyzed all of the evidence available from the investigation, including police reports, witness statements, forensic evidence, dispatch records, radio transmissions, and Deputy Roque's BWC footage.

To hold Deputy Roque criminally liable for an assault with a firearm, the People would have to prove that he did not act in self-defense or defense of others. An analysis of the evidence in this case shows Deputy Roque actually and reasonably believed deadly force was necessary to defend against an imminent threat of death or serious bodily injury to himself and others. Accordingly, the shooting was justified, and it would be inappropriate to charge Deputy Roque with a crime.

## Subjective Belief – Necessity of Deadly Force

Deputy Roque waived his right to remain silent and gave a full interview. He articulated that he was afraid of being imminently “hacked” by Mr. Barton with the meat cleaver or hit with the hammer causing him great bodily injury or even death. Deputy Roque said he knew he was facing a deadly force situation and believed if his Taser failed he wouldn’t have time to use deadly force before Mr. Barton could hit him with the cleaver or hammer. Deputy Roque told the interviewer that at the moment Mr. Barton began to charge with the hammer ready to strike, he believed he “had to shoot him” to save his own life or limb. He also articulated that he was afraid Mr. Barton might imminently assault W-2, who was just behind him.

The evidence of Deputy Roque’s actions corroborates his statement that he was afraid and believed it was necessary to shoot Mr. Barton. The BWC footage shows that Deputy Roque began backing away as soon as he saw Mr. Barton with the weapons. He immediately radioed for emergency backup, “*Send me another unit; elderly man with an axe; send me units code 3.*” The BWC footage shows the deputy drew his Taser and pointed it at Mr. Barton as he backed away. He gave multiple commands to Mr. Barton to “get back” or “stop.”

As Mr. Barton got closer and they neared the street, Deputy Roque told dispatch that Mr. Barton was stilling coming at him. He drew his firearm, warning Mr. Barton to “*stand back*” or “*you’re gonna get shot.*” The BWC footage shows that Deputy Roque did not use deadly force until Mr. Barton raised the hammer over his shoulder and quickened his pace.

## Objectively Reasonable Belief – Necessity of Deadly Force

The entire incident is on video, and the evidence shows that Deputy Roque’s belief that deadly force was necessary to defend against a deadly threat was objectively reasonable under the totality of the circumstances.

Howard Barton came down from the porch holding a meat cleaver in one hand and a hammer in the other. Mr. Barton assumed a fighting-stance and advanced slowly toward Deputy Roque with the deadly weapons held ready to fight. Mr. Barton ignored all of the deputy’s commands and the pleading of his relative, W-2. Mr. Barton focused on Deputy Roque and kept moving toward him despite the threat of being tased or shot.

Mr. Barton’s appearance and behavior on December 29, 2023, indicated he was ready to imminently inflict deadly force on anyone in his way. When Mr. Barton raised the hammer ready to strike and quickened his pace, it was objectively reasonable to believe he was about to use deadly force on the deputy and that shooting him was necessary to stop him. Even W-2, Mr. Barton’s relative, believed that Mr. Barton was about to throw the cleaver at the deputy.

Deputy Roque had no backup, and Mr. Barton did not give him the luxury of time or space. Only 45 seconds expired from the time Deputy Roque first saw Mr. Barton on the porch to the moment Mr. Barton charged him with the hammer and cleaver ready to strike.

Deputy Roque considered whether less lethal means could stop Mr. Barton. He had his Taser out, but by the time Mr. Barton was within range, he chose to draw his firearm because he would have been unable to stop Mr. Barton if the Taser failed. No reasonable officer would have attempted using the Taser under the same circumstances without a second officer providing lethal cover.

## **CONCLUSION**

Based on the review of the investigation and evidence, along with the analysis of the facts, applicable statutes, and legal principles, the shooting of Howard Barton by Deputy Roque on December 29, 2023, was justified as self-defense. As such, no criminal action will be taken against Deputy Roque for his use of force in this case.