

REPORT ON THE FATAL SHOOTING OF ADAM WAYNE SMITH ON DECEMBER 13, 2018



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REVIEW OF THE EVIDENCE

1. Items Reviewed

The following items were reviewed along with attached transcripts, diagrams and photographs:

- Yuba Sutter Officer Involved Shooting Team reports for OIS SCDA 18-020 (2 binders)
- California Department of Justice, Bureau of Forensic Services Field Investigation Report CH-18-000345-0001
- California Department of Justice, Bureau of Forensic Services Physical Evidence Examination Report CH-18-000345-0002
- Yuba County Sheriff's Department reports for Incident No. 1-18-004650
- Yuba County Sheriff's Department reports for Coroner Case No. 1-18-004654
- Autopsy Report Y18-132; Kelly Kobylanski, DO, pathologist
- National Medical Services, Inc. toxicology report 365284
- Search Warrants 18-265 and 18-266 for 9793 Brett Way, Dobbins
- California driver record and criminal history information of Adam Wayne Smith

2. Events as determined from the reviewed materials

Background

Adam Wayne Smith was 35 years old on the date of his death. Information taken during his autopsy reflected that he was a normally developed Caucasian male; 5' 9" tall; and weighing 158 pounds.

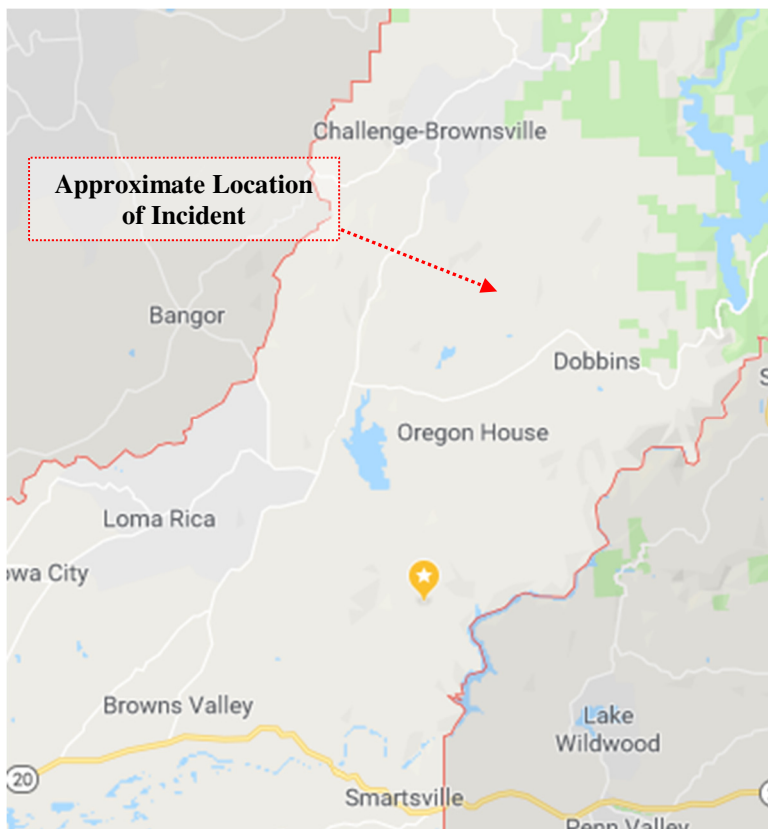
Mr. Smith lived in Oregon House, California. He was a Building Trades Journeyman Pipefitter and a member of the United Association, a union of plumbers, fitters, welders, and service techs. His employment status at the time of his death and social history are unknown.

According to records from the California Department of Motor Vehicles and Department of Justice, Mr. Smith had a minor history with the criminal justice system in Butte County between 2003 and 2012, consisting of convictions for theft, methamphetamine possession, public intoxication, and driving under the influence. At the time of Mr. Smith's death, he was pending misdemeanor charges from 2018 out of San Mateo for possession and being under the influence of a controlled substance.

Initial Call for Service & Response

On December 13, 2018, at 8:12 a.m., Yuba County Sheriff's Public Safety Dispatcher Kimberly Moua received a 911-call transfer from the California Highway Patrol. The caller, Timothy Thomas, reported that his neighbor had come to his property on Vavassuer Way in Oregon House and threatened to kill him. Seven minutes later a second 911-caller, Brian Burns, told Dispatcher Moua that he heard two subjects yelling and screaming. Mr. Burns, who lives less than ½ a mile from Mr. Thomas, said he heard one male yell, "I'm going kill you, you're dead," followed by six gunshots.

Yuba County Deputy Sheriff Nathan Byrom was dispatched to the call at 8:22 a.m. He responded with lights and siren from Loma Rica, arriving at Mr. Thomas's home at 8:38 a.m.



Deputy Byrom spoke with Mr. Thomas, who explained that for the last few weeks he had regularly heard his neighbor to the east, later identified as Mr. Adam Smith, yelling and shooting a gun, including during nighttime hours. The previous evening, on December 12, 2018, Mr. Thomas responded to Mr. Smith's yelling by shouting "Shut the fuck up!"

Mr. Thomas said at approximately 8:00 a.m. on December 13, 2018, he was sitting on his porch when he saw Mr. Smith standing on Vavassuer Way, approximately 75 yards away. Mr. Smith was yelling and appeared to be "tweaking." Mr. Smith turned toward Mr. Thomas and said, "I'm going to fucking kill you!"

Mr. Smith walked north on Vavassuer and then into the dense woods east of Vavassuer. About 10 minutes later Mr. Thomas heard approximately 10 gunshots fired rapidly from the direction of Mr. Smith's home. Mr. Thomas said he was worried because Mr. Smith was under the influence of drugs and was shooting a gun. Mr. Thomas was afraid Mr. Smith would actually kill him.

Mr. Thomas provided a description of Mr. Smith as a white male adult, approximately 6' tall, 180 pounds, with a bushy beard, last seen wearing a dark hat and dark colored sweatshirt. Mr. Thomas did not know the address, but provided directions to reach Mr. Smith's house. The home was determined to be located at 9793 Brett Way.

While Deputy Byrom spoke with Mr. Thomas he could hear a man yelling nonstop approximately 100 yards northeast of his location. The yelling was mostly unintelligible. California Highway Patrol Officer Uhrich arrived and started a perimeter at the end of Mr. Thomas's driveway. While at the base of the driveway Officer Uhrich heard what he believed was a single .22 caliber gunshot coming from the woods to the northeast. An unidentified citizen driving south on Vavassuer Way stopped and told Officer Uhrich that a bullet had "whizzed" over his head.

Deployment of Bi-County SWAT Team

Mr. Smith's property lies east of Vavassuer Way and west of Brett Way. The property contains thick stands of pine and fir trees with significant undergrowth. The vegetation was so thick that neither Deputy Byrom nor Officer Uhrich could see Mr. Smith even though they could hear him yelling less than 100 yards away.

Aerial View of Mr. Smith's Property. Screenshot from Google Maps taken June 2019.



Deputy Byrom called and briefed Yuba County Sheriff's Sergeants Neil Houston and Nathan Lybarger about the circumstances. Based on the immediate danger presented by Mr. Smith, who after threatening to kill his neighbor and firing shots was concealed in the dense foliage and armed with a firearm, the Sergeants requested the Bi-County SWAT Team¹ deploy to locate Mr. Smith and take him into custody. The request was granted and the SWAT Team was activated at approximately 8:52 a.m.

Yuba County Sheriff's Lieutenant Joe Million arrived shortly thereafter and assumed overall command of the incident. A perimeter was established and strengthened to contain the area surrounding Mr. Smith's home. As additional law enforcement personnel arrived, they began warning the surrounding neighbors of the danger. One of those neighbors told CHP Officer Uhrich the man in question was "Adam," and that he had been acting strange lately.

¹ The Bi-County SWAT Team is a multi-agency law enforcement team with expertise in Special Weapons and Tactics ("SWAT"). The team is comprised of officers from the Yuba City and Marysville Police Departments and the Yuba County Sheriff's Department. Each of the SWAT officers have extensive specialized training and experience.

Yuba County Sheriff's Sergeant Brandon Spear used a commercial database and determined that Adam W. Smith owned the parcel of land located at 9793 Brett Way. Sergeant Spear used that information and statements from the deputies on scene to author a search warrant requesting authorization to search "Adam" and the property located at 9793 Brett Way for firearms and other evidence. Yuba County Superior Court Judge Benjamin Wirtschafter signed the Search Warrant at 10:44 a.m.

Service of Search Warrant

The team leaders for the SWAT Team briefed the SWAT officers as they arrived. They told the officers that the suspect was a white male adult with a shaggy beard, last seen wearing a dark colored hat and shirt. They also related that the suspect had threatened his neighbor and discharged a firearm. The suspect was likely still armed and it was unknown if he was in the house or still in the woods.

Once Judge Wirtschafter signed the search warrant, members from the Bi-County SWAT Team began slowly moving toward the house. Each SWAT officer wore a tactical uniform that included a helmet and ballistic vest with POLICE or SHERIFF patches on the front and back. Because the officers did not know if Mr. Smith was inside the residence or still in the woods they searched the property for him as they moved. As they searched, Mr. Smith came out of hiding and began firing a rifle at one or more of the officers. Seven officers returned fire, killing Mr. Smith instantly. Each of the involved officers described the brief gunfight from his own perspective.

Yuba City Police Officer Chad Cornwell has been a peace officer for 11 years. Officer Cornwell was clearing a shed south of Mr. Smith's residence when he heard two to three gunshots behind him. Cornwell spun around and ran toward some trees for cover. He saw Mr. Smith walking on the porch pointing a rifle directly at him and firing. Officer Cornwell heard bullets flying past him. Officer Cornwell shot at Mr. Smith until Mr. Smith fell to the ground.



Vantage of the house from Officer Cornwell's position at the time of the shooting. Photo taken by Criminalist Brewer.

Yuba City Police Sergeant Brian Thornton has been a peace officer for 12 years. Sergeant Thornton was east of Mr. Smith's residence when he heard gunshots coming from the opposite side of the house. A few seconds later Sergeant Thornton saw Mr. Smith round the southwest corner of the house. Mr. Smith was moving purposely with the rifle leveled in the direction of SWAT officers who were south of the residence. Sergeant Thornton believed Mr. Smith was going to shoot at the officers. Sergeant Thornton fired his rifle at Mr. Smith until he was down.

Yuba City Police Officer Josh Jackson has been a peace officer for 18 years. Officer Jackson was east of the residence when he suddenly heard 5 to 10 muffled gunshots coming from the west side of the residence or from within the residence. Officer Jackson heard Sergeant Thornton say there was a man on the porch. Officer Jackson looked and saw Mr. Smith coming around the southwest corner of the house. Mr. Smith was moving toward them and pointing a rifle. Believing that Mr. Smith was going to fire at them, Officer Jackson fired his rifle at Mr. Smith.

Yuba City Police Officer Mike Bullard has been a peace officer for 12 years. Officer Bullard was southeast of the residence when he heard four to five gunshots in rapid succession coming from the west side of the house. A few seconds later Officer Bullard saw Mr. Smith come around the southwest corner of the house. Officer Bullard saw Mr. Smith had a rifle in the "up and ready" position with the rifle shouldered and the sights in-line with his eye. Mr. Smith was scanning from left to right. Officer Bullard saw Mr. Smith stop scanning and point the rifle toward the west where several members of the SWAT Team were clearing a shed. Believing that Mr. Smith was about to shoot at the SWAT officers to the southwest, Officer Bullard fired his rifle at Mr. Smith until he fell to the ground.

Yuba County Deputy Sheriff Fernando Machuca has been a peace officer for eight years. Deputy Machuca was searching a shed and vehicle southwest of the residence when he heard approximately five gunshots. Deputy Machuca moved to cover and saw Mr. Smith standing near the southwest corner of the residence pointing a rifle. Deputy Machuca believed Mr. Smith was shooting the rifle at SWAT officers east of the residence. Deputy Machuca fired his rifle at Mr. Smith until he saw him go down. The shooting lasted maybe two seconds.

Marysville Police Officer Ryan Souza has been a peace officer for approximately three years. Officer Souza was clearing a vehicle southwest of the house when he heard three gunshots. Officer Souza turned and saw Mr. Smith standing on the porch holding something in his hands. He could not tell what Mr. Smith had in his hands, but said that Mr. Smith was holding the object with his elbows out as if he was pointing a firearm. Officer Souza then heard additional gunshots coming from where Mr. Smith was standing. Believing Mr. Smith was shooting at the SWAT officers east of the house, Officer Souza fired his rifle at Mr. Smith until he went down.

Marysville Police Officer Joseph Liebman has been a peace officer for three years. Officer Liebman was moving toward a vehicle southwest of the house when he heard shots fired behind him. Officer Liebman turned and saw Mr. Smith on the porch on the west side of the residence. Officer Liebman saw Mr. Smith holding a black rifle and heard Mr. Smith fire two to three shots as he rounded the southwest corner of the house. Believing Mr. Smith was shooting at the other SWAT officers, Officer Liebman took a knee and fired his rifle at Mr. Smith until he fell. The shooting lasted approximately three to four seconds.

Actions After the Shooting

Mr. Smith likely died instantly, falling partially into a recess between the porch and the house. The SWAT officers cautiously approached. A police K-9 was used to verify that Mr. Smith was incapacitated and not waiting to ambush approaching officers. Officer Bullard grabbed Mr. Smith's rifle, dropping the magazine and ejecting a live .22 caliber round from the chamber. Other officers pulled Mr. Smith's body off the porch to a location where they had cover and could render aid if necessary. The remaining officers proceeded to secure the rest of the property.

3. Field Investigation

On December 13, 2018, at 12:15 p.m., the Yuba Sutter Officer Involved Shooting ("OIS") Team was called to investigate the incident. The Chief Investigators from the offices of the Yuba and Sutter County District Attorneys lead the team, which is comprised of peace officers from each of the member agencies, including the Yuba City Police Department, Sutter and Yuba County Sheriffs' Offices, and the Sutter and Yuba County District Attorneys' Offices. The purpose of the team is to provide an unbiased and professional investigation into officer involved shooting incidents. Investigators on the team are all experienced officers with specialized training in investigating critical incidents.

The OIS investigation team members began arriving at the incident scene at approximately 1:45 p.m. Each of the involved officers placed an evidence placard at the scene on the spot from which he had fired his rifle. Based on standard procedures investigators sent the deputies and officers who had fired their weapons to a secure location for processing. Each of the involved officers and deputies surrendered their rifles, pistols and magazines to the OIS investigators so that rounds could be counted and ballistic comparisons could be made if necessary.

The round counts yielded only an approximate number of cartridges actually expended because of variances between the number of cartridges loaded into individual magazines. Based on the round counts, approximately 38 cartridges were fired: Officer Cornwell – 3 cartridges; Officer Bullard – 7 cartridges; Officer Jackson – 2 cartridges; Sergeant Thornton – 5 cartridges; Deputy Machuca – 9 cartridges; Officer Souza – 7 cartridges; Officer Liebman – 4 cartridges.

The OIS investigation team also requested assistance from crime scene experts from the California Department of Justice Bureau of Forensic Services ("DOJ"). California DOJ Senior Criminalists Anna Brewer and Kirsten Wallace arrived at approximately 3:00 p.m. The OIS team members and DOJ criminalists processed the scene over two days², photographing and collecting each piece of evidence. From the west and south sides of the residence on and around the porch/deck they collected 42 spent .22 caliber cartridge cases, Mr. Smith's Ruger Model 10/22 rifle, and a magazine for the Ruger rifle with 4 unfired .22 caliber rounds.

² The search of the property halted for several hours on December 13, 2018, because of two pipe bombs discovered inside the residence. Technicians from the Butte County Sheriff's Bomb Squad responded to the scene and destroyed the devices.



Photo of Mr. Smith's rifle by DAI Dinwiddie.



Photo of evidence markers showing location of some spent cartridges fired by SWAT officers and recovered from the leaf debris. Despite the debris, investigators located and collected 34 spent 5.56 / .223 caliber cartridge cases fired by the SWAT officers. Photo by Criminalist Brewer.



Photo of two spent .22 caliber cartridge cases photographed by Criminalist Brewer on the deck near southwest corner of house.

4. Interviews

OIS investigation team members systematically interviewed 27 officers who were at or near the scene during the gunfight. All the interviews were audio recorded.

Yuba County Sheriff's Deputies interviewed some of Mr. Smith's neighbors. The neighbors corroborated Mr. Thomas's complaint about yelling and gunshots coming from Mr. Smith's property at all hours of the night. Several of the neighbors also mentioned Mr. Smith had been acting strangely and may have been using drugs.

5. Forensic Autopsy

On December 17, 2018, Forensic Pathologist Dr. Kelly Kobylanski performed a forensic autopsy of Mr. Smith's body at the Placer County Coroner's Office. The autopsy involved the external and internal examination of Mr. Smith's body to document any injuries and determine the cause of his death. Dr. Kobylanski determined Mr. Smith died from multiple gunshot wounds. She documented multiple gunshot wounds to his head, trunk/back, left arm, and right leg. There was no soot or stippling present at any of the gunshot wound sites, indicating all shots were fired at a distance of over 2'. She also noted minor injuries to Mr. Smith's right leg consistent with bites by a canine (K-9).

Dr. Kobylanski's autopsy findings included methamphetamine intoxication based on the presence of methamphetamine and amphetamine in his postmortem blood.

6. Forensic Lab Examination & Analysis of Physical Evidence

DOJ senior Criminalist Wallace authored a report, documenting her lab work and findings. She microscopically compared some of the spent cartridge cases recovered from the scene with test-fired cases she created by test-firing the seized rifles. She verified that the .22 caliber cartridge cases recovered from the scene were fired from Mr. Smith's Ruger rifle.

II - LEGAL PRINCIPLES IN OFFICER-INVOLVED USE OF FORCE CASES

Possible criminal charges against an officer involved in a fatal use of force event include murder [Penal Code Section 187]; voluntary manslaughter [Penal Code Section 192(a)]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149].

In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code 196

Police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used “in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty” or when necessarily committed when “arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.” Formal written charges are not required for this rule to apply; it is sufficient that an officer have probable cause to believe the suspect committed the offense. (*People v. Kilvington* (1894) 104 Cal. 86, 92.)

When a police officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11.) This requirement that a suspect poses a threat of physical harm can be satisfied where there is probable cause to believe the suspect has committed a crime involving the infliction of serious physical harm and deadly force is necessary to prevent escape. (*Id.* at 11-12.)

These holdings from *Garner* were subsequently clarified by the United States Supreme Court in *Graham v. Conner* (1989) 490 U.S. 386, where the Supreme Court explained that an officer's right to use deadly force is to be analyzed under the Fourth Amendment's “objective reasonableness” standard. The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham, supra*, 490 U.S. at 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that “police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.” (*Id.*) The “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.*)

Courts recognize “under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.”

(*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In effect, the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. (*Martinez, supra*, 47 Cal.App.4th at 343-344.)

A homicide is justifiable under Penal Code Section 196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. county of Los Angeles* (1996) 47 Cal.App.4th at 334.) This test is satisfied when deadly force is necessary to stop a fleeing felony suspect where the felony is forcible or atrocious. (*Kortum v. Alkire* (1997) 69 Cal.App.3d 325, 333.) Forcible and atrocious felonies are generally those crimes whose character and manner reasonably create a fear of death or serious bodily harm, such as murder, mayhem rape, and robbery. (*Id.*)

This standard under Penal Code Section 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. California courts have held that when a police officer's actions are reasonable under the Fourth Amendment, the requirements of Penal Code Section 196 are satisfied. (*Martinez v. City of Los Angeles*, 47 Ca.App.4th 334, 349.)

Courts recognize that criminal suspects who flee or attempt to flee from police in a vehicle present a heightened danger to the public. (See e.g., *Scott v. Harris* (2007) 550 U.S. 372, 386 [holding that a "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death"].) *Plumhoff v. Rickard* is another example. In *Plumhoff*, officers pursued Mr. Rickard, who appeared to have been drinking, and drove recklessly while fleeing a traffic stop. (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 768-770.) The Court found that Mr. Rickard's driving posed a grave risk to public safety and held it was reasonable for the officers to terminate the pursuit by shooting into the vehicle 15 times, killing both Mr. Rickard and his passenger. (*Id.* at 776.) In addressing the question of the number of shots fired in relation to the public safety risk, the Court stated it "stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." (*Id.* at 777.)

California Penal Code 197

California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant criminal jury instruction is set forth in CALCRIM 505, stating that a person acts in lawful self-defense of defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. In lawful self-defense or defense of another, a persons may use no more force than is reasonably necessary

to defend against the danger. (CALCRIM 505.)

A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) In *Aris*, the trial court’s clarifying instruction to the jury on the subject was to the point and later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christina S.* (1994) 7 Cal.4th 768, 783.)

A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) What constitutes “reasonable” self-defense or defense of others depends on the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robbery. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*People v. Reed* (1969) 270 Cal.App.2d 37, 45.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (CALCRIM 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348.)

When deciding whether a person’s beliefs were reasonable, a jury considers all the circumstances as they were known to and appeared to the person, and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.)

In the related context of cases alleging excessive force by police, the test of reasonableness of an officer’s use of deadly force is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner* (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer’s need to protect himself and others. The calculus of reasonableness must embody the allowance for the fact that “police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.” (*Id.* at 396-397.)

III - LEGAL ANALYSIS

I have carefully examined the recorded statements, the reports of law enforcement officers who witnessed or investigated the officer-involved shooting, the statements of civilian witnesses, the audio recordings and CAD records from the agency dispatch centers, as well as the other materials described herein.

On the morning of December 13, 2018, Mr. Smith threatened to kill his neighbor, placing Mr. Thomas in fear for his life. This conduct was a felony criminal threat in violation of Penal Code Section 422.

The officers who responded to the initial call correctly recognized the extreme risks posed by trying to locate Mr. Smith in the woods by themselves. They called for backup and the Bi-County SWAT Team answered the call to handle this extremely dangerous situation.

Having obtained a search warrant signed by a judge the SWAT officers were lawfully on Mr. Smith's property to serve the search warrant.

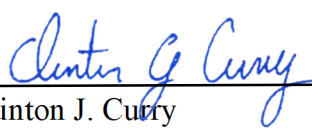
Mr. Smith shot at the officers. The officers to the west saw Mr. Smith with the rifle and believed he was shooting at the officers to the east. The officers to the east saw Mr. Smith with the rifle and believed he was shooting at the officers to the west. Officer Cornwell, who was south of the residence and essentially between the two groups of officers, saw Mr. Smith shooting right at him and heard the bullets whizzing by him. All seven officers collectively fired approximately 38 rounds from their duty rifles in roughly two to four seconds. The law is very clear that if someone shoots at police officers they may shoot back. The deputies and officers who fired their duty weapons were justified in their use of deadly force.

IV - CONCLUSION

There is overwhelming evidence that officers' actions in this extremely dynamic environment met the standard of a reasonably prudent law enforcement officer, and the discharge of a firearm was an objectively reasonable use of force under both California statutory law and United States Supreme Court decisional law.

It is my legal opinion that there is no evidence of criminal culpability on the part of the involved officers in the death of Mr. Smith. Accordingly, the Yuba County District Attorney's Office is closing its inquiry into this incident and no further action is contemplated.

DATED: July 1, 2019



Clinton J. Curry
District Attorney