



## ADMINISTRATIVE REVIEW – AUDIT

Case Details	
Complainant Name	SCSO Self-Generated
Case No.	19-AR-0003
Type of Investigation	SCSO Administrative Review Pursuant to 93-1 Critical Incident Protocol—Officer Involved Shooting (OIS)
Incident Dates	August 1, 2019
Date/Origin of Complaint	Administrative Review Assigned August 13, 2019
Date IA Sent to IOLERO	April 29, 2020
Date Audit returned to SO	August 15, 2022

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## SUMMARY

This Audit addresses an SCSO Administrative Review of an Officer Involved Shooting (OIS) that occurred on August 1, 2019. The incident involved an SCSO deputy's shooting and wounding of a robbery suspect who was armed with a knife and who had taken control of the deputy's patrol vehicle. The Administrative Review Report (AR Report) was issued on March 13, 2020.

We **AGREE** with the AR Investigator's conclusion that Dep. David Edney acted within SCSO Policy 300 regarding the use of deadly force, when he discharged his firearm to prevent the suspect from driving away in a commandeered patrol car.

However, we note that the AR Investigator did not address the deputy's delayed activation of his BWC, an issue that should be addressed in every Administrative Review.

In addition, we believe that the Administrative Review of the use of force was too narrow in scope. By its terms, the Administrative Review is intended to determine whether SCSO policies, procedures and/or training were adequate or could be improved upon to reduce the need for the use of deadly force in future incidents, and not just whether the use of force was lawful.

## MATERIALS REVIEWED

We reviewed all materials provided by SCSO in the AIM system in connection with the Administrative Review. We also reviewed BWC video from Dep. David Edney and seven other deputies, audio of SCSO Dispatch concerning the incident, and video/still photos of the scene taken by the SCSO helicopter. A full list of the materials is attached as **APPENDIX A**.

## FACTUAL BACKGROUND

### **I. Dep. Edney's Initial Response to the Robbery Call**

On August 1, 2019 at 5:38 p.m., in response to a 9-1-1 call, Santa Rosa Police Department (SRPD) dispatch radioed for officers to respond to a robbery at the Macy's store located at the Santa Rosa Plaza. Dispatch advised that the suspect was a black male adult wearing a brown shirt and khaki pants, that he brandished a knife, and that he had attempted to stab one of Macy's Loss Prevention officers. (AR Report at 9).

SCSO Deputy David Edney was on patrol in Santa Rosa and monitoring SRPD's radio channel when he heard the dispatch request. (Interview at p. 7, lines 322–326; p. 8, lines 334–335).<sup>1</sup>

According to Dep. Edney, SRPD dispatch described the suspect as “a black adult male wearing a brown jacket and a red backpack” who had stolen some items and who, when confronted by security, “tried to stab [the security person] in the eye”. (Interview at p. 8, lines 335–340; p. 15, lines 697–702). The suspect was later identified as Brad Baymon.

SRPD dispatch stated that the suspect had “fled northbound through the garage”. Dep. Edney decided that because he “was close enough” to the incident, he would “try and go set up a perimeter spot maybe several blocks north just to keep an eye out”. (Interview at p. 8, lines 339–340).<sup>2</sup>

## **II. Dep. Edney's Initial Contact with Mr. Baymon**

Dep. Edney was in an SCSO uniform and driving an SCSO-marked SUV. After driving north through Railroad Square, he turned east onto 9<sup>th</sup> Street. (Interview at p. 8, lines 344–347). Just before reaching the Highway 101 overpass, Dep. Edney saw “a male matching that . . . description [of the suspect] exactly[,] cross the street, coming north . . . closer to the church there”. (Interview at p. 8, lines 345–347).<sup>3</sup>

Dep. Edney radioed SCSO “This is sheriff Frank 34. We have a possible 211 suspect, 9<sup>th</sup> and Morgan, Santa Rosa call.” (SCSO Dispatch at 0:01–0:07; Interview at p. 8, lines 351–352).

Dep. Edney drove to within “about 50 to 100 feet” of Mr. Baymon and put his vehicle in park; he had not activated emergency lights or sirens. (Interview at p. 8, lines 351–356). When the deputy stopped his vehicle, Mr. Baymon was walking away eastbound but he then turned and started walking west back towards Dep. Edney. (Interview at p. 8, lines 353–356; p. 14, lines 632–658). At this point, Dep. Edney was “90 percent sure this is [the Macy's suspect]” because he was wearing the “red bag or backpack”. (Interview at p. 8, lines 355–357).

Dep. Edney exited the vehicle, leaving the engine running and the driver's side door open. (Interview at p. 14, lines 660–665; p. 15, lines 681–689). Dep. Edney explained that he left the car door open and engine running because “it was such a quick engagement [because] he [Mr. Baymon] did turn around and start coming towards me, and so it's not like I had time

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<sup>1</sup> “Interview” refers to the interview of Dep. Edney by Santa Rosa Detectives on August 2, 2019. See “Factual Background Section VI” below.

<sup>2</sup> Dep. Edney stated he was near the corner of Sebastopol Road and Olive Street when he heard the dispatch. That is approximately 0.8 miles from the Macy's location. (Interview at p. 7, lines 322–323).

<sup>3</sup> The street heading north from the Santa Rosa Plaza and the parking garage is “A” Street, which curves 90 degrees to the left (west) in front of St. Rose Church; the street name changes to 9<sup>th</sup> Street at the elbow of the turn and then runs west crossing Morgan Street before continuing under the Highway 101 overpass.

to turn the car off, put the key in my pocket. . . . I mean, certain times you would do that on a call, but this didn't call for it. I was, my focus was him and that was it, and I wasn't . . . concerned at the time that he was going to try and jump into my car. Um, for me it was I needed to get out and engage him as quickly as possible." (Interview at p. 17, lines 794–804).

### **III. Dep. Edney's Attempts to Detain Mr. Baymon**

Dep. Edney activated his Body Worn Camera (BWC) a few seconds after he exited his vehicle. When the BWC is activated, it saves the immediately preceding 30 seconds of video—without audio—that had been recording in “buffering” mode. This 30-second soundless video showed Mr. Baymon raising his right hand in what appears to be an acknowledgement of the deputy's presence. (BWC at 0:26). No knife was visible in Mr. Baymon's right hand; the image of the left hand is unclear. Mr. Baymon was carrying a red bag tucked between his left arm and his body, and his left hand held what looks to be a clear plastic storage container. He was wearing an overcoat that appeared brown or dark olive in color. (BWC at 0:26). Mr. Baymon continued walking directly past Dep. Edney (who was standing in the “V” of his open vehicle door). (BWC 0:27–0:29). Any verbal commands given by Dep. Edney and any verbal responses from Mr. Baymon prior to this point were not captured by the BWC.

Dep. Edney then activated the BWC and audio began recording along with video. (BWC 0:30). As Mr. Baymon walked past, Dep. Edney followed with his weapon drawn and stated “Get on the ground right now”. (BWC 0:30–0:32). Mr. Baymon was about 4 to 5 feet away from the deputy at this point, and no reaction can be seen from Mr. Baymon—he just kept walking. Dep. Edney then stated “I will Tase you.” (BWC 0:33–0:34). Dep. Edney had drawn his Taser and was following Mr. Baymon from behind as he kept walking, still without reaction to or acknowledgement of the deputy.

In his later interview with SRPD, Dep. Edney stated that he did not see a knife at this point, but that he was now “99.9 percent sure this was my guy” because Mr. Baymon matched the description of the suspect, the suspect had been reported heading north from the store and Mr. Baymon was north of the store, and Mr. Baymon was not obeying the deputy's command. (Interview at p. 8, lines 373–384). Accordingly, Dep. Edney stated that he resolved to detain Mr. Baymon:

Um, at this point, because I knew he had tried to stab somebody or hurt or kill them, I wasn't gonna let this guy get away. I was, like, this guy needs to be stopped. I need to either just incapacitate him or do whatever I can to apprehend him so I shot him once with the Taser.

(Dep. Edney Interview at p. 9, lines 387–390).

Indeed, the BWC shows that Dep. Edney followed Mr. Baymon for three or four more steps and discharged the Taser at his back. (BWC 0:35–0:36). Mr. Baymon showed no reaction to the Taser which appears to have struck the mid-to-lower part of his coat. Mr. Baymon (still walking without turning his head and without breaking stride) reached behind him with his right hand in what appears to be an attempt to remove the Taser prongs from his coat. (BWC 0:37–0:38).

Dep. Edney then ran past Mr. Baymon's left side to get in front of him. When the deputy was in front and off to Mr. Baymon's left, he discharged the Taser a second time at Mr. Baymon's chest. (BWC 0:39). This time Mr. Baymon visibly reacted to the Taser by tilting his head to the left. (BWC 0:39). Dep. Edney stated "Get on the ground." As he said this, Mr. Baymon dropped the red bag and plastic container, turned 180 degrees and started walking in the opposite direction. (BWC 0:40). Dep. Edney stated "Get on the f\*\*\*ing ground right now". (BWC 0:40-0:41).

The deputy's vehicle can be seen in the background parked next to the curb with the door open. Mr. Baymon turned around to face the deputy, and Dep. Edney stated "Get on the ground right now". Mr. Baymon continued turning until he completed a full 360 degrees and was again walking away from the deputy. During this turn, Mr. Baymon outstretched his arms to his side and stated something which sounded like "oso bear", and Dep. Edney again stated "Get on the ground right now." (BWC 0:42-0:45).<sup>4</sup>

Mr. Baymon continued walking away dragging on the ground the Taser which was still attached to him. (BWC 0:46-0:47).

### **III. Mr. Baymon's Entry into Dep. Edney's Patrol Vehicle**

By this point Mr. Baymon had come to where the deputy's vehicle was parked. He turned to his right and headed toward the open driver side door. Dep. Edney radioed SCSO "Frank 34. Taser's deployed. He's trying to get into my car." (BWC 0:48-0:49; SCSO Dispatch 0:31-0:32). Mr. Baymon started getting into the driver's seat and Dep. Edney ran to the car yelling something unintelligible—it could have been "get out" or "get on the ground". (BWC 0:49-0:50).

Now inside the vehicle, Mr. Baymon closed the door. Dep. Edney opened the door and Mr. Baymon tried to hold the inside handle but lost his grip. The deputy told Mr. Baymon "get out of here" and Mr. Baymon responded "F\*\*\* you man, get . . . ." As Mr. Baymon stated this, he grabbed the inside door handle. At this point, a brown straight object resembling a fixed blade knife approximately 4 to 5 inches long can clearly be seen in his left hand. Mr. Baymon pulled the door shut. (BWC 0:51-0:55).

### **IV. Shots Fired by Dep. Edney**

After Mr. Baymon pulled the door shut, Dep. Edney rapidly fired six rounds through the window at Mr. Baymon. (BWC 0:56-0:58). Dep. Edney radioed "Frank 34. Shots fired. Shots fired. I got one suspect down." (BWC 0:59-1:01; SCSO Dispatch 1:03-1:05).

The driver's side window was blown out by the gunfire. Dep. Edney told Mr. Baymon three times "Don't move". (BWC 1:02-1:06). For approximately 7 seconds Dep. Edney watched Mr. Baymon from several feet away, and then stated twice "Let me see your hands." (BWC 1:07-1:15). Mr. Baymon is not visible on the BWC but he clearly replies "I can't move them." (BWC 1:15-1:16). Dep. Edney then said "Do not move. You understand?" to which

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<sup>4</sup> "Oso" is Spanish for "bear" as well as a conjugated form of "osar" meaning "to dare".

Mr. Baymon responded “Yes”. (BWC 1:17–1:19). Dep. Edney radioed “Frank 34. I need red com stage” (BWC 1:22–1:23; Dispatch 2:17–2:20), and told Mr. Baymon again “Do not move. You understand?” to which Mr. Baymon responded “Yes”. Dep. Edney then stated “Do not go for that knife.” (BWC 1:27–1:32).

At this point a SRPD officer arrive on scene, and Dep. Edney stated to him “I just shot him. He’s not moving. He’s talking though.” (BWC 1:32–1:34).

Dep. Edney twice asked Mr. Baymon “where’s the knife at” and Mr. Baymon responded “It’s on the bottom”. Dep. Edney asked “It’s on the what?” Mr. Baymon responded “there” and Dep. Edney asked “Did you just throw it? Don’t move. Do you understand?” and Mr. Baymon replied “Yes”. (BWC 1:35–1:44).

Dep. Edney opened the driver’s side door and told the SRPD officer “He threw the knife just now. I don’t see where it is.” After looking into the vehicle he said “There it is right there”. (BWC 1:45–1:51).

A second SRPD officer on the scene, reached into the vehicle, and retrieved the knife. (BWC 1:55–2:04).

**V. Dep. Edney’s Statements Immediately Following the Shooting**

As SRPD officers were discussing removing Mr. Baymon from the vehicle, Dep. Edney told them “I tried to Tase him. He ran from me and he jumped into my patrol car.” (BWC 2:22–2:25).

SRPD officers pulled Mr. Baymon from the vehicle. (BWC 2:26–2:55). While SRPD officers attended Mr. Baymon, Dep. Edney radioed “Frank 34. We’ve got him detained. You can send in medical.” (BWC 3:00–3:03; Dispatch 3:37–3:39).

At this point, Dep. Edney started to move away from the officers attending Mr. Baymon, and muttered “F\*\*\*” under his breath. (BWC 3:07). As he moved down the sidewalk a few steps, an SRPD officer approached him and Dep. Edney stated:

I f\*\*\*ing tried to Tase him. I tried to Tase him again, and he f\*\*\*ing bolts towards my car. I left it exposed like an idiot, and he jumped right in.

\* \* \*

As soon as I tried to open the door on him, he f\*\*\*ing tried to, it looked like he was trying to go for the knife again and so I backed up. Closed it, and he was trying to put it into drive, and I just shot him. I was like, he’s not taking my f\*\*\*ing car. After doing a 211, tried to stab somebody. I got my gun in there, my rifle. I just feel like an idiot. He ran into my f\*\*\*ing car.

(BWC 3:12–3:22; 3:33–3:53).

After a few seconds, Dep. Edney walked back toward where Mr. Baymon was being attended, and an SRPD officer asked him where Mr. Baymon had been hit. (BWC 4:06–4:08). Dep. Edney explained the angle of the shots and the SRPD officer asked “OK, was he getting into your car or something?” (BWC 4:08–4:17). Dep. Edney responded:

Yeah. I tried to Tase him in the end. And then I tried again, and none of them worked and he bolted for my car and I was on the other side of him. And he jumped in and closed the door. I pulled the door open and he looked like he was trying to go for the knife again, so I let him close the door. And I said “don’t go”. And he took off and so I shot him through my window because I was, he’s not taking my [patrol] car. Especially if I have weapons in there and he just tried to stab somebody.

(BWC 4:18–4:35).

Dep. Edney was then separated (“sequestered”) from the incident scene and asked by an SRPD officer for “public safety” how many shots were fired and whether they all went into the car, to which he responded that he fired “4 or 5” rounds into the car. (BWC 4:36–5:36).<sup>5</sup>

At this point, SCSO Sgt. Erick Gelhaus arrived, asked Dep. Edney if he was ok, and told him to go off of the BWC and call his wife. (BWC 5:38).<sup>6</sup>

Mr. Baymon was transported to the hospital with gunshot wounds. He was later charged and convicted on several counts (including robbery) and sentenced to prison. *See* SCR-00729951-1.

#### **VI. Dep. Edney’s Interview with SRPD**

Pursuant to “Critical Incident Protocol SCLECA 93-1” § III.A.7 (discussed in more detail below), Dep. Edney was interviewed by SRPD Detectives Ryan Cogbill and Anthony Turner on August 2, 2019. Also present was Nicole Pifari, Dep. Edney’s counsel. Pursuant to CIP § III.A.7.i, Dep. Edney was permitted to review his BWC video prior to his interview. (Supplemental Statement by SRPD Detective Ryan Cogbill).<sup>7</sup>

Dep. Edney was initially asked to provide a narrative of events leading to and including the incident, which he did at length. (Interview at p. 7, lines 309 to p. 11, line 480). Dep. Edney’s description of events captured by the BWC video is consistent with the summary narrative of the BWC provided above, and will not be repeated.

Dep. Edney’s statements regarding matters not specifically captured by the BWC are set out below.

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<sup>5</sup> A total of six shots were fired.

<sup>6</sup> SCSO deputies who sequestered with Dep. Edney had their BWCs activated until Dep. Edney left the scene. (BWC of Dep. Nicolas Miller; BWC of Dep. Michael Matelli). Sgt. Gelhaus took possession of Dep. Edney’s BWC unit at the scene. (BWC of Dep. Nicolas Miller).

<sup>7</sup> Section III.A.7.i. states “Officers shall be allowed to view any video or audio recordings captured by them prior to being interviewed”.

- **View of Potential Threat When Contact Was Made With Mr. Baymon.**

Dep. Edney stated that the initial SRPD dispatch said that the suspected robber had tried to stab the security guard “in the eye”, and that dispatch was “pretty clear about it”. When asked if it was clear to him that it was a “violent offense”, Dep. Edney stated “Yeah. Oh, yeah. That he already tried to hurt somebody seriously or kill them and then, um, they could, he could try it again.”

When asked about his mental process when dealing with Mr. Baymon, Dep. Edney stated that he was thinking “[Mr. Baymon] could pull out the knife at any moment or another weapon like a . . . firearm or something that I just couldn’t see and . . . because he was in such close proximity to me, I was worried for my safety. I thought he might try and stab me or do something else, you know, with another weapon and that was going through my mind the whole time. . . . The moment . . . I was 100 percent it was him, I was thinking this guy could hurt or kill me and that wasn’t going to happen. . . . [W]hen I decided to transition to the Taser, try the less lethal option because I couldn’t readily see any weapons in his hands. Um, it was still in my mind that at any moment . . . we’ve had that training where they tell you, you know, from 20, 25 feet someone could run you down . . . with a knife and get you before you could draw and . . . that was all going through my mind.”

Dep. Edney further stated “Because I couldn’t see the weapon at that moment in his hands, I decided to see if I could just incapacitate him to stop it, stop the threat right then. So that was, that’s what was going through my mind then. The moment that didn’t work and I went back to my pistol, that was still going in my mind. I was like okay, um, he could pull the knife out at any moment and try and attack me, um, he could, if somebody would, not knowing what was going on, decided to cross the street, that happens all the time, he could go after them for all I know. He’s already tried to do it with one security guard . . . citizen, so all that was just continuously going in my mind the whole time I was dealing with him. And then once again, the moment he got into my patrol car it just, I mean, it says, it seems kind of funny to say it could up the ante but that for me was even, it was even more like okay, now this guy really means business because he’s got my vehicle as a weapon, um, he’s got my other firearms in there that could be weapons and that’s just unacceptable, so. . . . If he had gotten in the car and driven away, if he knew how to drive that car right away and just took off before I could make, take any action, he could have ran into some citizen and killed them, he could have tried to hit a police officer, you know, and that was, those were not options. . . . ‘Cause like I said before, the moment I engaged him when I knew it was him, he was not leaving.” (Interview at p. 15, line 697 to p. 17, line 789).

- **Struggle At The Vehicle Immediately Prior to Shooting.** Dep. Edney stated that when he ran to the vehicle and opened the door after Mr. Baymon had climbed in, he did not see a knife. When Mr. Baymon let go of the door and turned away, “it was in my mind that he was grabbing the knife or another weapon that I didn’t know about” and “that’s when I backed off” and Mr. Baymon shut the door. Ultimately, Dep. Edney did not see a knife until after Mr. Baymon had been shot. (Interview at p. 11, line 486 to p. 12, line 531).

When asked about his observation that after closing the door the second time Mr. Baymon “made movements towards the gear shift”, Dep. Edney stated “uh, at the end, that’s correct. Yeah, after he made whatever movement he made towards the center console and came back towards me, once he closed the door, I could see him through the side window reach up like he was going to grab the gear shift and, and put it into drive. . . . I thought he was gonna put it into drive and drive away and, and like I just explained to [Det. Cogbill], that wasn’t an option because he could use my vehicle as a weapon. He could, I don’t know how well he knows Ford Explorers, but he, he could know them really well and then jump into the trunk and grab weapons or, and that wasn’t okay.” (Interview at p. 17, line 806 to p. 18, line 820).

- **Taser.** Dep. Edney explained that after firing two rounds, the Taser was no longer usable except as a “dry stun” which would require him to get physically close to Mr. Baymon. Dep. Edney stated this was not an option because Mr. Baymon was turning away from him, the Taser wires were still connected to Mr. Baymon, and it was dangerous to have a Taser in hand if Mr. Baymon “decided to go hands on” with the deputy. (Interview at p. 12, line 533 to p. 13, line 583).

- **Weapons in the Vehicle.** Dep. Edney stated that he had a rifle (with [REDACTED] rounds and a 40 millimeter “less lethal” weapon in the vehicle that were in [REDACTED] the SUV [REDACTED] Dep. Edney stated that when Mr. Baymon climbed into the vehicle, he thought that “the car is a weapon now. He can drive around the corner, [REDACTED] have access to my . . . rifle and the 40 mil., and use it maybe on someone else.” (Interview at p. 6, lines 278–283; p. 13, lines 584–613; p. 18, lines 822–829).

- **Presence of By-Standers.** Dep. Edney stated that when he initially saw Mr. Baymon, he “didn’t notice any pedestrians anywhere”, and that “even though I was focused on [Mr. Baymon], I didn’t notice anybody behind him on the sidewalk because I knew this could have been an issue if I had [to] use my firearm.” (Interview at p. 13, line 614 to p. 14, line 630).

## THE AR INVESTIGATION

### I. **Critical Incident Protocol**

#### A. **Criminal Investigation**

SCSO Policy 305.1 provides that when investigating officer-involved shootings and deaths, SCSO “will follow the procedures and guidelines set forth in the Sonoma County Chief’s Association Policy 93-1: Employee Involved Critical Incident Protocol” (CIP).

The CIP requires that when there is an officer-involved-shooting, the criminal investigation is to be conducted by a Lead Agency that is not the employer of the involved officer, in conjunction with the District Attorney’s Office. (CIP at p. 2, § I.C; p. 4, § I.I.). The Santa Rosa Police Department was designated Lead Agency in this case.

The District Attorney's Office reviewed SRPD's completed criminal investigation and on April 21, 2020 issued a report concluding that Dep. Edney did not violate criminal laws in using deadly force against Mr. Baymon. *See Law Enforcement Employee-Involved Critical Incident Report*, Office of Sonoma County Dist. Atty. (Public Copy) (Apr. 21, 2020).

### **B. Administrative Review**

The CIP excludes the Employer Agency for which the involved officers work (in this case SCSO) from participating in the criminal investigation. However, the Employer Agency may conduct its own "administrative investigation" of the incident to (1) "determine[] whether or not an employee has violated employer agency rules, regulations or conditions of employment", and to (2) "determin[e] the adequacy of employer policies, procedures, training, equipment, personnel and supervision." (CIP at p. 2, § I.B; pp. 18–19 § III.B.1).

The decision to conduct an administrative investigation is the "concern and responsibility solely of the employer agency." (CIP at p. 19 § III.B.2). The employer agency may assign an investigator to conduct the administrative investigation, and the investigator may have access to briefings, crime scenes, physical evidence and interviewees' statements taken in the criminal investigation. (CIP at p. 19, § III.B.4).

## **II. Scope of SCSO's Administrative Review**

The AR Investigator assigned by SCSO conducted an Administrative Review pursuant to the CIP, expressly noting that the Administrative Review was not based on a complaint or allegation of misconduct against any deputy. Rather, it was an analysis of the incident generally to "determine if [SCSO] policies were followed or if any policy can be improved upon." (AR Report at 8; CIP at p. 18, § III.B).

The AR Investigator limited the scope of the Administrative Review to selected policies that "govern *some* of the actions" taken by the deputy:

- Use of Force–300
- Firearms–306
- Media Relations–324
- Major Incident Notifications–329
- Critical Incident Debriefing/Defusing–338
- Patrol Functions–400
- Critical Incident Protocol SCLECA 93-1 (SCSO Policy 305)

(AR Report at 8, 40) (*italics added*).

The AR Investigator did not explain how the scope of the Administrative Review was determined.

## **III. Investigative Record**

The AR Investigator relied on the criminal investigation record compiled by the SRPD, including criminal Investigative Report 19-0010275 (along with Supplemental Reports from Det. Ryan Cogbill and Det. Anthony Turner), BWC video of Det. Cogbill's interview of Brad Baymon on August 2, 2019, the transcript of interview of Dep. Edney by Det. Cogbill and Det.

Turner, reference to one undated communication from Dep. Edney to the Investigator regarding the specifications of Dep. Edney's rifle, and Brad Baymon's criminal history.

The AR Investigator also reviewed SRPD criminal Investigative Report 19-0010229 which included statements from interview of witnesses to the shooting as well as the security guards present when the robbery occurred.

The AR Investigator further relied on a review conducted of Dep. Edney's BWC video which laid out a series of still frames and a caption describing the events for each moment.

#### **IV. Investigator's Conclusions**

Based on the investigative record, the AR Investigator issued a generalized "Conclusions and Findings" statement:

Based on what I have reviewed of Deputy David Edney's actions on August 1, 2019, and comparing them with the Sonoma County Sheriff Office's Policy and Procedures as well as state and federal laws[,] I believe Deputy David Edney acted appropriately considering the circumstances he faced.

(AR Report at 40). The AR Investigator then separately addressed each policy he identified as applicable to this incident.

##### **A. Use of Deadly Force**

In evaluating Dep. Edney's use of deadly force, the AR Investigator cited the legal standards in *Graham v. Connor* (1989) 490 U.S. 386 and California Penal Code § 835a (as it was in effect in 2019), which generally require that a peace officer's use of force be objectively reasonable. (AR Report at 40–42).<sup>8</sup>

The AR Investigator also cited SCSO Policy 300.3 "Use of Force" which required deputies to use only that amount of force that "reasonably appears necessary given the facts and circumstances perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose." (AR Report at 41). The AR Investigator further cited SCSO Policy 300.3.2 which sets out various factors to be considered when deciding whether and how much force to use, and Policy 300.3.1 which states that a deputy need not retreat from efforts to make an arrest because the suspect has resisted. (AR Report at 41–42).

Finally, the AR Investigator paraphrased the general rule in SCSO Policy 300.4 that a deputy may use "*deadly force*" to protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury. (AR Report at 42).

Under these legal and policy standards, the AR Investigator concluded:

This situation clearly showed why Deputy Edney's actions were reasonable and justified, not only from a policy standpoint, but based on federal and state laws. When Deputy Edney used his handgun he was in fear for his life and the potential victims if Baymon gained access to his marked patrol vehicle and/or the weapons located

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<sup>8</sup> Penal Code § 835a was amended effective January 1, 2020.

within. Suspect Baymon already showed the propensity of using a deadly weapon when he attempted to stab the loss prevention officers over a pair of shoes.

(AR Report at 42).

The AR Investigator then quoted extensively from Dep. Edney’s interview with SRPD where he stated that he believed Mr. Baymon was armed and could pull a knife or other weapon out “at any moment” or try to stab him, that he was aware from training that a person could run a person down from “20, 25 feet” before a deputy could draw their weapon, that he decided to try the Taser when he did not see a knife in Mr. Baymon’s hands but when that failed he drew his handgun, that he was worried that Mr. Baymon could attack a bystander if one were to come near given that he already tried to stab a security guard, and that when Mr. Baymon entered the vehicle he had access to other weapons and the vehicle itself. (AR Report at 42–43).

Based on these factors, the AR Investigation found “no violation noted” in the use of force. (AR Report at 43).

#### B. Other SCSO Policies Reviewed

The AR Investigator summarily reviewed Policies 306 (Firearms), 324 (Media Relations”, 329 (Major Incident Notifications), 338 (Critical Incident Debriefing/Defusing), 400 (Patrol Function), and the Critical Incident Protocol (CIP). This review was largely cursory and concluded “no violation noted” for each.

## DISCUSSION AND CONCLUSIONS

### I. Use of Deadly Force

A peace officer’s use of force to make an arrest must be “objectively reasonable” from the standpoint of a deputy on the scene. *Graham v. Conner* (1989) 490 U.S. 386; Cal. Pen. Code § 835a (any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance) (in effect in 2019).

The permitted use of *deadly force*, however, is more limited and confined to circumstances where the officer reasonably believes that the person presents an “imminent threat of death or serious bodily injury” to the officer or another person. *Tennessee v. Garner* (1985) 471 U.S. 1.

SCSO Policy 300 (as it was in effect in 2019) incorporated these legal standards and provided that “deadly force” was justified in the following circumstances:

- (a) A deputy may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury. Imminent does not mean immediate or instantaneous.
- (b) A deputy may use deadly force to stop a fleeing subject when the deputy has probable cause to believe that the subject has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the deputy reasonably believes that there is an imminent risk of

serious bodily injury or death to any other subject if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

SCSO Policy § 300.4.

By its terms SCSO Policy § 300.4 appears to require that a deputy need only meet the minimal constitutional and statutory standards concerning the use of deadly force. To the extent SCSO interprets § 300.4 in this manner, we agree that Dep. Edney acted within policy when he used deadly force to prevent Mr. Baymon from fleeing in the patrol vehicle.

The investigative record shows that when he first made contact with Mr. Baymon, Dep. Edney had a reasonable factual basis to believe that Mr. Baymon was the suspect in a robbery and in an attempted stabbing. The SRPD dispatch described the suspect as wearing a “brown jacket and red backpack”. Dep. Edney observed Mr. Baymon carrying a “red bag or backpack”, and the BWC video shows Mr. Baymon wearing a dark olive or brown coat. (Interview at p. 8, lines 335–340, 355–357; p. 15, lines 697–702; BWC at 0:26). Mr. Baymon was also north of the robbery location in the area in which the suspect had been reported heading. (Interview at p. 8, lines 339–340). Based on these factors, Dep. Edney had probable cause to stop and detain Mr. Baymon.

Dep. Edney also had a reasonable factual basis to believe that Mr. Baymon was armed with a knife and had just committed a felony which involved the threatened infliction of serious bodily harm or death to the security guards. While he did not see the knife until after Mr. Baymon was shot, it was reasonable for Dep. Edney to conclude that it was hidden on Mr. Baymon’s person (which in fact it was), and that Mr. Baymon could attempt to use the knife on the deputy or upon any bystanders who happened to come by. Dep. Edney explained he understood from training that a person could run a deputy down with a knife from between 20 and 25 feet away before the deputy could draw his weapon. (Interview at 16, lines 738–274). Dep. Edney’s decision to immediately engage Mr. Baymon and to prevent him from leaving was reasonable under these circumstances.

Dep. Edney also issued lawful orders to Mr. Baymon to stop and get on the ground. Mr. Baymon did not merely disobey; he ignored Dep. Edney’s presence altogether and continued to act as if the deputy was not there. Mr. Baymon then elevated the threat by commandeering the deputy’s vehicle which contained a lethal weapon (rifle with ammunition). Mr. Baymon physically struggled to prevent Dep. Edney from removing him from the vehicle, and according to Dep. Edney, Mr. Baymon then reached for the gear shift to drive away.

In these circumstances, Dep. Edney could reasonably believe that there was an imminent threat of death or serious bodily injury to himself and/or others if Mr. Baymon was not prevented from fleeing with the vehicle and weapon. Mr. Baymon had been reported as having just used deadly force on others, and it was reasonable for Dep. Edney to conclude that Mr. Baymon would use deadly force on the deputy or others with the knife he was reported as possessing, as well as with the vehicle and/or rifle in the vehicle.

SCSO Policy 300.4(b) (consistent with governing law) required that “a verbal warning should precede the use of deadly force, where feasible”. Here, Dep. Edney did not verbally warn Mr. Baymon that he would be shot if he did not get out of the vehicle. However, under these circumstances a verbal warning was not reasonably “feasible”. Based on Dep. Edney’s statements and the BWC video, less than a second elapsed between when Mr. Baymon closed the door and when he reached for the gear shift. Thus there was no time for a warning to be given before the vehicle could be driven away. Also, the window was rolled up and it was not likely Mr. Baymon would have heard a warning. It is also highly unlikely that Mr. Baymon would have heeded a warning: after being Tased twice (after being informed this would happen) and being ordered several times to get on the ground, Mr. Baymon responded by commandeering the patrol car.

We also note that Dep. Edney fired his handgun only when Mr. Baymon appeared to be reaching for the gear shift to drive away. Although Dep. Edney reasonably understood throughout his encounter with Mr. Baymon that he had a knife and had attempted to stab someone, the deputy initially decided to use his Taser when he did not see a knife in Mr. Baymon’s hands. He also made an attempt to remove Mr. Baymon from the vehicle without using deadly force. It was only when Mr. Baymon closed the door a second time and appeared to be placing the vehicle in gear to drive away that Dep. Edney fired his handgun.

Accordingly, we agree with the AR Investigator’s conclusion that Dep. Edney’s use of deadly force to prevent Mr. Baymon from fleeing in the deputy’s vehicle was within SCSO Policy 300.4(a) and (b), as we understand it to be interpreted by SCSO. *See Koussaya v. City of Stockton* (2020) 54 Cal. App. 5<sup>th</sup> 909, 936 (standards for evaluating use of force reflects deference to split second decisions by officers; what is reasonable is viewed from perspective of reasonable deputy on the scene when the force was used).

## **II. The AR Report Did Not Address the BWC**

The AR Investigator summarily reviewed several other policies addressing procedural aspects of the Critical Incident Protocol and concluded that there were no violations noted. We generally concur.

However, the AR Report did not address **SCSO Policy 425.6** which requires deputies to activate their BWC “prior to making contact” during law enforcement encounters, including self-initiated encounters. Dep. Edney did not activate his BWC until after he had exited his vehicle as Mr. Baymon was walking past him. While it appears from BWC video that Dep. Edney may have twice unsuccessfully attempted to activate the BWC earlier when he first arrived on scene, neither SRPD nor SCSO asked Dep. Edney about this and the AR Report did not address it. (*See* Edney BWC at 0:03; 0:07).

The BWC video plays an important role in every review of a deputy’s actions. Accordingly, compliance with BWC policy, including the timing of activation, should be evaluated as a matter of course in every Administrative Review.

In this case, because the overall record was sufficient to review Dep. Edney’s use of force, the timing of the BWC activation does not materially alter the final conclusion.

### **III. The Scope of the Administrative Investigation was Too Narrow**

While we agree that use of deadly force specifically to prevent Mr. Baymon from fleeing in the commandeered vehicle was within SCSO policy, we believe that the Administrative Review on this issue was too narrow.

By its terms, the Administrative Review does not determine whether the use of force was *lawful*; that issue is separately addressed by the criminal investigation. Thus, to the extent SCSO interprets Policy 300 to require only compliance with the minimal constitutional and statutory standards for using deadly force, the Administrative Review of that policy is duplicative of the criminal investigation and will result in nothing more than a restatement of the criminal investigative findings.

The purpose of the Administrative Review, however, is distinct from the criminal investigation. Its stated purpose is to determine broadly whether SCSO policies, procedures and/or training were followed, were adequate to the needs of the incident and whether they could be improved.

In this case, while the elapsed time between Dep. Edney's exiting his vehicle and discharging his handgun was only 33 seconds, the full sequence of relevant events which culminated in the use of deadly force began before the deputy exited his vehicle. The deputy was responding to a dispatch by SRPD describing the robbery suspect as one who had just attempted to stab someone. The deputy did not respond with the purpose of contacting and detaining the suspect, but rather to see if he could set up a perimeter to assist (he responded without emergency lights or siren). The deputy did not call for backup either before or upon arriving on scene.

As a result, when the deputy confronted Mr. Baymon, the deputy was alone on a non-SCSO originated call in which events rapidly escalated.

In addressing the deputy's response to the SRPD dispatch, the AR Investigator cited (but provided no discussion of) Policy 400 which generally defines the function of a patrol deputy as responding to reports of criminal activity, deterring crime, enforcing laws, providing support to the community, and responding to emergencies. (AR Report at 45).

However, other SCSO policies apply which the AR Investigator did not address. For example, SCSO Policy 327 (Mutual Aid and Outside Agency Assistance) specifies when and how a deputy may respond to requests for assistance from an outside agency, and when a superior SCSO officer must be involved. SCSO Policy 308 (Deputy Response to Calls) further identifies when and how a deputy will respond to a call as an emergency or non-emergency, whether a Code 3 response involving the use of emergency lights and sirens is appropriate, and whether they should call for back up emergency assistance. Policy 308 additionally requires the SCSO dispatcher to take certain actions in connection with calls—*e.g.*, broadcasting information about the response, monitoring the situation until stabilized or terminated, and controlling all radio communication during an emergency. SCSO Policy 429 (Foot Pursuits) also sets out “guidelines to assist deputies in making the decision to initiate or continue pursuit of suspects on foot”. *See also* Policy 801 (addressing radio communication between deputies and

dispatcher); Policy 802 (regulating access to SCSO's radio frequencies by other law enforcement agencies).

In reviewing these policies and applying them to this incident, the AR Investigator could reasonably ask (for example):

- Could/should Dep. Edney have treated the call as an emergency and called for backup immediately given that the suspect had been reported armed and as having tried to stab someone?
- Could/should Dep. Edney have treated the encounter as a possible "foot pursuit" (requiring more specific evaluation of possible dangers to the public) once Mr. Baymon refused to stop walking away and the deputy was required to physically follow him?
- Could/should Dep. Edney have radioed SCSO to request additional SCSO units to widen the perimeter and allow the deputy to disengage from immediate physical contact?
- Were any other courses of action reasonably available under SCSO Policies and procedures that might have prevent the scenario where the deputy was required to use deadly force?

We do not know the answers to these questions. Moreover, we do not suggest that an Administrative Review must evaluate *every* policy that might possibly apply to an officer-involved-shooting or death incident.

However, the stated purpose of the Administrative Review is to conduct a broad overview of SCSO policies, to determine their adequacy, and to propose changes if needed. This should include a review of those policies that have a reasonably direct impact on how the incident unfolded and led to the use of deadly force, whether SCSO policies themselves contributed to the need to use deadly force, and whether the incident could/should have been handled differently to avoid, or to reduce the risk of, the need to use deadly force.

Date: August 15, 2022

Respectfully Submitted:

GARRICK BYERS  
Interim Director

BY:

  
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Matthew Chavez, Esq.  
Law Enforcement Auditor III

## APPENDIX A

### MATERIALS REVIEWED FOR AUDIT

- SCSO Administrative Review, *Internal Investigative Report*, No. 18-AR-0003 (dated Mar. 18, 2020)
- Transcript of Interview with Dep. David Edney by SRPD Det. Ryan Cogbill and Det. Anthony Turner (Aug. 2, 2019)
- Supplemental Statement of Det. Ryan Cogbill concerning August 2, 2019 Interview with Dep. David Edney
- Transcript of Interview of [REDACTED] by SRPD Det. Anthony Turner and Det. Michael Spediacci (Aug. 1, 2019)
- Supplemental Report of SRPD Det. Anthony Turner re Interview with [REDACTED] (Aug. 1, 2019)
- Transcript of Interview of [REDACTED] by SRPD Det. Anthony Turner (Aug. 1, 2019)
- Firearms Training Record for Dep. David Edney (Jan. 1 to Sept. 30, 2019)
- Helicopter-1 Video/Photos of Scene (17 files)
- SCSO Dispatch SD190801019 (21m 2s)

#### **BWC Video**

- Dep. David Edney (5m 45s)
- Dep. Daniel Merz (44m 7s)
- Dep. Juan Valencia (44m 6s)
- Dep. Michael Matelli (2m 11s)
- Dep. Kalvin Goforth (19m 1s)
- Dep. Kevin McGoon (6m 40s)
- Dep. Nicholas Miller (5m 7s)
- Dep. Scott McKinnon (9m 15s)