

Inyo County District Attorney

Use of Force Report

Incident Date: July 24, 2021

Inyo County Sheriff Report Number 21-07-097

2329 North Sierra Highway and 969 Tu Su Lane,
Bishop, CA

Inyo DA Number 027-0035923



Prepared By:

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Inyo County District Attorney

September 7, 2021

Introduction:

In the early morning hours of July 24, 2021, two Deputies of the Inyo County Sheriff contacted George Clinton Barlow III in the parking lot of the Bishop Chevron Station at 2329 North Sierra Highway in the unincorporated portion of Inyo County near the City of Bishop. The contact led to a use of force by the Deputies that was captured on video by two non-law enforcement witnesses. Those videos later circulated on social media.

It was determined that it was appropriate for the District Attorney to conduct an independent “use of force” investigation into the actions of the Deputies.

The sole purpose of a District Attorney’s investigation is to determine whether or not the actions of the Deputies violated any criminal law. This report does not attempt to review any potential civil, administrative, or policy issues that may arise as a result of the incident.

For all the reasons set forth, it is my conclusion that the Deputies’ use of force was lawful.

Materials Reviewed:

Inyo County Sheriff’s Report 21-07-097, together with Supplemental reports 1, 2, and 3, including photographs.

Inyo County District Attorney’s Investigations Division Reports in case number 027-0035923.

Bishop Police Department report 21-0570

“Axon” body camera recording from Deputy #1

“Axon” body camera recording from Deputy #2

“Axon” body camera recording from Bishop Police Department Officer

Citizen video recordings

Surveillance video recordings from the Bishop Chevron Station for the time period immediately prior to and during the contact in question.

Surveillance video recordings from Bishop Automotive Repair for the time period immediately prior to and during the contact in question.

California Highway Patrol “CAD” log of events

Inyo County Sheriff Dispatch Audio Recordings of event

Training Records of Involved Deputies

Inyo County Sheriff Use of Force Policy

Factual Background:

The Incident:

The following description of the incident is drawn from the Sheriff’s Department incident reports in its case number 21-07-097, review of the body cam and surveillance video taken during the incident, and interviews completed by District Attorney Investigators. It is presented in summary form, rather than an attempt to detail each witness’ statement.

Deputies were dispatched to a potential restraining order violation case at approximately 2:07 a.m. on July 24, 2021. They arrived at the initial scene at approximately 2:35 a.m., and were not able to locate the parties to that call. They then went to 969 Tu Su in an attempt to locate the reporting party. They were not successful. However, at approximately 2:43 a.m., they heard a subject yelling in the parking lot of the Bishop Chevron station on North Sierra Highway (across Tu Su from their location). The Chevron station was closed at the time.

As the Deputies approached, Deputy 1 notified the Sheriff Department dispatcher that he and Deputy 2 were going to contact “one male” who was “either (f) or Eleven-Five”—short-hand for someone allegedly violating Penal Code section 647(f) (drunk in public) or Health and Safety Code section 11550 (under the influence of a controlled substance). Given the early morning hour, the fact that the Chevron station was closed, and their observation of an individual yelling, the Deputies actions were entirely appropriate and, in fact, what is expected of peace officers. Deputy 1 crossed Tu Su on foot, while Deputy 2 drove across the street and parked to the south of Bishop Chevron.

As Deputy 1 arrived at Bishop Chevron, he called out to the subject by saying “Yo”. The Deputy’s tone and tenor were calm and friendly. The subject replied “Hi”, to which the Deputy also replied “Hi”. The Deputy’s tone was still non-confrontational. At this point, the subject responded by saying words which sound like “Can I kill you, too?” These words were stated at a distance from the Deputy, and the body cam audio recording is not perfectly clear.

At this point, the subject began to run aggressively towards Deputy 1. Deputy 1 clearly attempts to create distance between himself and the subject by moving back and away from the subject (this is most clearly shown on the Bishop Chevron surveillance recording). Deputy 1 says to the subject “Don’t run at me bro”, and then “Back up, you’re going to get tased”. At this point, the subject continues to advance on Deputy 1, saying “What do you want” and making comments that the Deputy should leave. The subject never stops advancing on Deputy 1. Deputy 1 continues to order the subject to “Stop” (giving the command at least twice). The Deputy’s tone is assertive, but still calm.

When the subject fails to stop, Deputy 1 uses his Taser. It is ineffective, probably because of the relatively heavy shirt worn by the subject. The subject takes off his shirt, and continues to threaten Deputy 1 and begins to advance on him again. Deputy 1 now removes his baton.

As this is occurring, Deputy 2 comes on scene. After parking his vehicle to the south of Bishop Chevron, he had proceeded on foot around the back of the business and then when he heard the activity, proceeded to run to Deputy 1’s assistance. By this time, both Deputies were ordering the subject to get on the ground, and the subject was refusing. Deputy 2 used his Taser, which caused the subject to go to the ground, but the subject succeeded in removing the Taser probes and was attempting to stand up. At almost the same time, the subject’s dog appeared. The pit bull-type dog was aggressively lunging and biting at the Deputies. At one point, the subject can be heard to tell the dog to “Get them”.

The scene at this point is chaotic. Deputy 1 administers one baton strike to the subject’s torso, but the subject is able to grab onto the baton and begins attempting to disarm Deputy 1. The subject’s dog is attacking the Deputies, and Deputy 1, while struggling for his baton, is advising the subject that they will shoot his dog. The dog’s attack continues, and Deputy 2 was able to obtain a clear shot at the dog and dispatched it with one shot. The subject continued to fight for control of the baton.

Deputy 2 was then able to use his OC (oleoresin capsicum) pepper spray directly on the subject's face. This allowed Deputy 1 to regain control of his baton, and he administered one additional blow. While Deputy 1 was aiming for the subject's chest and arm, the subject continued to move and the blow landed on the subject's head. Despite all of this, the subject was able to stand up and advance first on Deputy 2, who created space by backing away, and then again on Deputy 1. Deputy 1 advised the subject that he (Deputy 1) was going to shoot him (he did not). The subject began to move away towards the apartment building across the street. Deputy 1 followed, advising the subject to stop or he would be bit (Deputy 2 had returned to his patrol vehicle to deploy his canine partner).

The time period from the initial contact until the subject began to cross Tu Su Lane was approximately one minute and 28 seconds, and at that point the subject was not obeying commands and was moving towards private dwellings.

The Sheriff's Department canine subdued the subject and, as trained, bit and held the subject as the Deputies arrived (which was almost immediate). The Deputies attempted to restrain and handcuff the subject, but the subject would not comply and continued to fight with the Deputies—even biting the hand and arm of Deputy 1. The Deputies were still struggling with the subject when an officer from the Bishop Police Department arrived as back up. Eventually, the three officers were able to handcuff and then shackle the subject. Almost immediately an ambulance was requested and dispatched. Prior to the arrival of the ambulance, additional back up from the California Highway Patrol arrived, and helped to hold the subject.

It is not clear exactly when the subject was identified as Mr. Barlow, but the Deputies were referring to the subject by name ("George") as they were attempting to calm him and gain compliance. They both reported being familiar with Mr. Barlow and had had prior law enforcement contact with him.

Mr. Barlow continued to struggle, even with the ambulance crew. Radio traffic from the ambulance on the way to the hospital stated that Mr. Barlow was struggling and that they were unable to control him, and that the patient was "actively fighting" them. One CHP officer rode in the ambulance.

From the videos, it appeared that the only injuries suffered by Mr. Barlow in the altercation were a laceration to his head (likely caused by the baton strike)

and the bite from the canine. As indicated below, Mr. Barlow refused to cooperate in the investigation (as is his right) but because of that refusal it was not possible to obtain his full medical records to determine if any other injuries may have been suffered. It is known that Mr. Barlow was home and in apparently good condition on August 5, 2021 when he was contacted by his Parole Agent.

Once arriving at the hospital, Mr. Barlow continued to fight. The emergency room doctor reported to the original investigating Deputies that staff at the hospital was required to “biochemically paralyze” Mr. Barlow due to his “overwhelming level of combativeness”.

While it cannot be confirmed (due to the unavailability of medical records), Mr. Barlow’s behavior is consistent with someone being under the influence of a controlled substance. Not only does he have a record of controlled substance use, but his ability to overcome two Taser deployments and the use of OC pepper spray indicate an extraordinary resistance to standard, non-lethal means of controlling suspects. It was also the initial suspicion of the Deputies when they contacted him.

In the course of the incident, Deputy 1 suffered numerous minor abrasions and bruising. Deputy 2 suffered a dog-bite puncture wound.

District Attorney Investigators contacted several occupants of the apartments at 969 Tu Su. Their observations were substantially consistent with the body cam and other video recordings. Some expressed their view that the force used was excessive, but none offered any factual information contradicting the Deputies’ reports.

Pre-Incident Behavior:

While not apparently known to the Deputies at the time of the incident, two civilian witnesses came forward during the investigation and reported a contact with Mr. Barlow in the early morning hours of July 24 prior to the incident in question.

Those individuals reported contacting Mr. Barlow as he was lying in the roadway at the intersection of West Line Street and Barlow Lane. The citizens stopped to see if Mr. Barlow needed assistance. He immediately stood up, and took a fighting stance. He made statements to the effect that the government

was trying to kill him. Mr. Barlow's dog was with him at this time, and Mr. Barlow attempted to "sic" the dog on the individuals. Mr. Barlow then left the scene.

Both citizens described Mr. Barlow as appearing to be drunk or under the influence. Both witnesses were positive in their identification, and each independently identified him in a photographic line-up.

This information, while not dispositive, is consistent with the observations of the Deputies and supports the observations made in their reports.

Mr. Barlow's Background:

At the time of the incident, Mr. Barlow was well known to Inyo County law enforcement officers. In a larger community where a subject may not be known to all or most members of the law enforcement community, this information may not be entirely relevant, but in our rural county a peace officer's knowledge of individuals and their criminal history is relevant in making a "totality of the circumstances" analysis as required by law. All of this information is in the public record.

Mr. Barlow was (and remains) on parole from the California Department of Corrections and Rehabilitation for felony violations of Penal Code section 273.5 (commonly known as felony domestic violence) and Penal Code section 245 (a)(1) (commonly known as assault with a deadly weapon). He had been sentenced to prison following his failure to comply with terms of Probation.

He had been in custody at the Inyo County Jail as recently as July 20, 2021 (four days before this incident). He had pled "guilty" to simple assault and released on another grant of probation. He was also on felony probation for taking controlled substances into the Inyo County Jail.

He has suffered several prior convictions for misdemeanor battery-type offenses and for controlled substance possession and usage.

Post-Incident Behavior:

On or about August 5, 2021, DA Investigators contacted Mr. Barlow's Parole Agent requesting assistance in arranging an interview with Mr. Barlow. When contacted later in the day on August 5 by his Parole Agent, Mr. Barlow indicated that he would not cooperate in the investigation, and refused to sign releases for his medical information. Consequently, we have not been able to obtain detailed

medical information regarding his injuries, nor his version of the events of July 24, 2021. According to his Parole Agent, when he gave Mr. Barlow the business card of the DA Investigator and asked him to call, Mr. Barlow ate the business card (Mr. Barlow chewed it up and swallowed it). Mr. Barlow also tested presumptively “positive” for the use of methamphetamine when tested by his Parole Agent. Mr. Barlow, of course, was under no obligation to cooperate in this investigation.

On or about August 18, 2021, Mr. Barlow was transported to Northern Inyo Hospital by his family for care apparently unrelated to the July 24 incident. Mr. Barlow refused to remain at the hospital, left the emergency room, and stole a vehicle from the hospital parking lot. He drove that vehicle home, where he was located by law enforcement. He is now facing felony vehicle theft charges as a result of that incident.

On or about August 24, 2021, Mr. Barlow was arrested for a violation of Penal Code Section 451(b), arson of an inhabited dwelling, and five counts of attempted murder, as the result of an investigation indicating that he had set fire to an occupied mobile home. Formal charges are pending in that case as well.

As to the incident of July 24, as well as the incidents of August 18 and August 24, Mr. Barlow is presumed to be innocent until the contrary is proven beyond a reasonable doubt.

Legal Analysis:

The legal analysis of this incident is controlled primarily by California Penal Code section 835a. That section provides, in subsection (b), that “[a]ny peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.”

Subsection(c)(1) details when a peace officer may use deadly force upon a person. While this incident did not involve the use of deadly force, it is instructive to know that deadly force may be used when an officer “reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person. (B) To apprehend a

fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.”

Subsection (d) also provides that “A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For purposes of this subdivision, “retreat” does not mean tactical repositioning or other deescalation tactics.”

Finally, subdivision (e) provides the following definitions:

- (1) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.
- (2) A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, but one that, from appearances, must be instantly confronted and addressed.
- (3) “Totality of circumstances” means all the 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.

In reviewing peace officer use of force, the United States Supreme Court in *Graham v. Conner* (1989) 490 U.S. 386 held that the reasonableness of a particular use of force must be analyzed from the perspective "of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. The Court further cautioned that the determination must "allo[w] for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and evolving." *Id.* at 397.

Pulling apart the layers of the analysis, the first question is whether or not the Deputies in this case used “deadly force”. I conclude that they did not (except

to the extent that deadly force was used to end the threat from Mr. Barlow's dog). At no time did the Deputies present or direct their firearms towards Mr. Barlow. All techniques and devices used were directed at obtaining compliance from Mr. Barlow, not towards inflicting injury. The second question is whether or not the force they used was "reasonable" under the totality of the circumstances.

The review of the evidence shows that Deputy 1 approached Mr. Barlow in a friendly manner. Upon contact, Mr. Barlow said words to the effect of "Can I kill you, too?" and immediately ran at Deputy 1. This is confirmed not only by the Deputy's body camera, but also by the surveillance video from Bishop Chevron and Bishop Automotive. Deputy 1 attempted to create space between himself and Mr. Barlow by stepping backwards and ordering Mr. Barlow to stop running at him. The commands went from friendly in tone to very direct as Mr. Barlow rapidly closed distance. Mr. Barlow is substantially larger than Deputy 1, and while at one point Mr. Barlow put his hands above his head, Mr. Barlow was still rapidly closing distance between himself and the Deputy.

At this instant in time, any reasonable peace officer would recognize that he or she is personally observing (and is a victim of) a felony violation of Penal Code section 69, resisting an executive officer by means of a threat or violence.

Deputy 1 responded to this threat by deploying his Taser. A Taser is a "neuro muscular incapacitation" device that uses an electrical charge to disable an aggressive individual. It is designed to give peace officers a less dangerous way to control a suspect who is using force against them. The initial Taser deployment was ineffective. Mr. Barlow removed his shirt, and with it the Taser prongs, and continued to advance on Deputy 1. A second Taser deployment by Deputy 2 was also ineffective.

When the Taser was ineffective, Deputy 1 drew his baton—a striking instrument—in an effort to stop the advance on him. Mr. Barlow grabbed the baton and attempted to take it from Deputy 1. Mr. Barlow released his grip on the baton only when Deputy 2 sprayed Mr. Barlow with OC (oleoresin capsicum) pepper spray.

Only after (1) attempting to use verbal commands to stop the attack; (2) the unsuccessful use of Tasers; and (3) the unsuccessful use of a baton, was Deputy 2's canine partner deployed. The canine, as trained, bit and held Mr.

Barlow until the Deputies, and an assisting Officer from the Bishop Police Department, were able to handcuff Mr. Barlow (and eventually apply shackles).

While Deputy 2 drew and discharged his firearm to stop Mr. Barlow's dog from attacking the Deputies, at no time was a firearm aimed at or used against Mr. Barlow.

What the evidence shows is a reasonable escalation of non-lethal force in response to an individual who was running directly towards a uniformed Deputy Sheriff and who refused simple commands to stop running at the Deputy. Alternate forms of non-lethal force were only used when other forms proved to be ineffective and Mr. Barlow continued to fight with the Deputies.

It is also important to note that the Deputies had no duty to retreat or desist in their efforts because of Mr. Barlow's resistance. Mr. Barlow's resistance continued even after he was handcuffed (and shackled) and was being transported to the hospital, and even while medical personnel were attempting to treat him.

While Mr. Barlow (and the Deputies) was injured in the incident, it does not appear that the injuries were life-threatening. Given Mr. Barlow's refusal to cooperate with the investigation it is impossible to determine the exact extent of his injuries, but it appears it they were limited to a laceration on his head, and the bite from the Sheriff's Department canine. Even after being taken into custody he exhibited the physical ability to actively resist treatment, and was still verbal. It appears that he was released from the hospital at some time prior to August 5, 2021—the day he was contacted at his home by his Parole Agent—and the Parole Agent reported only seeing the bite injury. Mr. Barlow appeared to otherwise be ambulatory, was engaging the Parole Agent in conversation (and was presumptively positive for the use of methamphetamine).

Taken together, it appears, then, that the Deputies did not use "deadly force" as described by Penal Code section 835a, and that the force that they did use was reasonable as defined in the context of Penal Code Section 835a, subsection (b).

Conclusion:

The use of force by anyone, including reasonable peace officers performing their duties is often disturbing, and rarely easy to watch. Nevertheless, peace officers have a grave responsibility to protect society, and the law allows them to use reasonable force when necessary. The incident of July 24, 2021 was one of those unfortunate situations where peace officers were required to use force to protect themselves and, potentially, others. The use of force was legally justified.