



DISTRICT ATTORNEY'S OFFICE

COUNTY OF TUOLUMNE

CASSANDRA ANN JENECKE

DISTRICT ATTORNEY

Date: September 24, 2026

To: Tuolumne County Sheriff David Vasquez
28 North Lower Sunset Drive
Sonora, California 95370

From: Tuolumne County District Attorney Cassandra Jenecke
and Retired Assistant District Attorney Eric Hovatter

Subject: Officer-Involved Shooting Tuolumne County Sheriff's
Office Case No. 210000105; Tuolumne County District
Attorney's Office Case No. 21-2411

Use of Force Officers: TCSO Sergeant James Riley (non-lethal)
TCSO Sergeant Romel Cuellar (non-lethal)
TCSO Deputy Cody Skellenger (non-lethal)
TCSO Deputy Michael O'Brien (non-lethal)

Injured Party: John Henry Banks

Sheriff Vasquez:

As an independent agency, the Tuolumne County District Attorney's Office has completed its investigation and review of the above-referenced officer-involved shooting, which occurred on January 9, 2021, in Groveland, California, and within the jurisdiction of the Tuolumne County Sheriff's Department. It is reported that John Henry Banks received non-lethal injuries during a use of force incident related to the investigation of a December 27, 2020, domestic violence incident.

The actions of the involved Tuolumne County Sheriff's Office law enforcement members did not rise to the level of criminal conduct that would warrant the filing of any criminal charges. The reasoning for this opinion is set forth in this report along with any changes in the law that may impact on our discretionary processes. Charges related to this incident will not be filed and this office considers the matter closed.

EVIDENCE REVIEWED

The District Attorney's Office received and reviewed the following written reports and evidentiary items related to this case:

- Tuolumne County Sheriff's Report number 21000094, including the Narrative report, thirty-three (33) supplemental reports and three (3) attachments;
- Tuolumne County Sheriff's Report number 21000105, including the Narrative report, twenty-five (25) supplemental reports and twenty-seven (27) attachments;
- Video recording, audio recording, and transcript of interviews with Confidential Victim;
- Video recordings, audio recordings, and transcripts of interviews with civilian witnesses Derrick Lawrence, Heaven Pratt, Summer Dawn Ward, Samuel Giambrone, Ashley Banks, Katrina Olson and Ryan Aherns;
- Video recording, audio recording, and transcript of interview with John Henry Banks;
- Video recordings, audio recordings and transcripts of interviews with Tuolumne County Sheriff's Office witnesses, including:
 - o Deputy Christian Favela
 - o Deputy Jeff Lee
 - o Deputy Daniel Newman
 - o Deputy Michael O'Brien
 - o Deputy Cody Skellenger
 - o Deputy Tyler Wend
 - o Detective Nathan Yorston
 - o Deputy Alex Zannini
 - o Sergeant James Riley
 - o Sergeant Romel Cuellar
 - o Sergeant Jacob Ostoich
 - o Then-Lieutenant David Vasquez
- Scene diagrams, and
- Photographs of the scene, ammunition inventory, and confidential victim

FACTS

On January 8, 2021, at 1626 hours, Confidential Victim (CV) contacted the Tuolumne County Sheriff's Office (TCSO) and reported her boyfriend John Henry Banks (Banks) had attempted to kill her in late December 2020. CV had called 911 at the time of the incident but hung up before speaking with a dispatcher. CV later said that, at that time, she had left the area prior to law enforcement's arrival. CV reported Banks had told her if she called law enforcement, he would kill her and then "go out in a gunfight with law enforcement."

Tuolumne County Sheriff's Deputy Shawn Betzenderfer was dispatched to Sonora Gold Lodge where CV had gone to evade Banks. In that interview, CV reported an incident of domestic violence perpetrated by Banks against her on December 26, 2020. CV stated that on December 26, 2020, she and Banks

argued, and she was locked out of the house they cohabitated. The next day, December 27, 2020, CV attempted to drive her car off the property and Banks used a tractor to block her departure with large logs. At that time, CV contacted law enforcement but left the property on foot prior to deputies arriving. Later on the evening of December 27, 2020, CV was able to enter the residence and eventually began packing her clothing. While packing Banks entered the room and CV told him not to hurt her, to which he responded, "I'm not gonna hurt you, I'm gonna kill you, bitch!" Banks then proceeded to pick CV up from the couch she was on and struck her repeatedly on the side of her face with a closed fist. Banks then grabbed CV by her hair and dragged her from the living room to the master bathroom where he threw her on the ground. Banks then looked around for something to tie CV up with and attempted to bind her hands with a bathrobe sash. CV attempted to resist and reported Banks then straddled her and struck her in the face several times. Banks was able to tie CV's hands up after striking her in the face as many as twenty to thirty times. He then repeated his threat to kill her and went looking for an implement, returning with a baseball bat. Banks then seemingly changed his mind and put the bat back where he had located it.

After Banks left the room, CV crawled to the bathroom and was attempting to lock the door when he returned and kicked the door open. He dragged her out of the bathroom and told her he was "looking for something to kill you with." Banks left the room and returned shortly with a large kitchen knife, which he showed to CV while saying, "Look, bitch. I'm gonna slit your throat!" He then used his knee to pin her to the ground and was attempting to gag her with a sock. At this point, CV said she lost the will to live and believed Banks was going to kill her. Banks continued to batter CV and appeared to continue his search for a weapon. Eventually CV was able to calm Banks down and he untied her. There was no further violence that evening and both CV and Banks went to bed. For the next few days, CV remained at the property as Banks had disabled her vehicle. On January 7, 2021, CV's vehicle had been repaired so she left the residence after Banks went to work and drove to Sonora Gold Lodge where she got a room. Later that day Banks called her and CV told him where she was, out of fear if she didn't. Banks came and had her vehicle removed with a tow truck. The next day CV decided it was time to call law enforcement.

At the time of his interview on January 8, 2021, Betzenderfer observed significant injuries to CV including bruising and swelling above and below both eyes, all sides of her neck, plus both arms, wrist and chest. Additionally, she had a rash/rug burn to her lower back. At that point, Betzenderfer determined there was probable cause to arrest Banks for felony domestic violence and kidnapping. Betzenderfer issued an Information and Belief¹ (I&B) for the arrest of Banks. An

¹ An information and belief (I&B) is a probable cause declaration written by a deputy who believes they have probable cause to arrest a suspect for a fresh felony, but they have been unable to

Emergency Protective Order (EPO) was granted by the on-call judge, but was not served based on Banks' threats to engage in a shoot-out with law enforcement, his prior violent history, and the fact law enforcement did not know Banks' location.

Based on the evidence and statements he obtained from CV, Banks' history of violence and the threat he made to CV of engaging in a shootout with police if apprehended, Betzenderfer completed an initial threat assessment and requested a consultation to determine if a response by the Special Weapons and Tactics (SWAT) team was necessary to apprehend Banks. SWAT Commander Sergeant James Riley was consulted, and he determined that a SWAT response was not appropriate at that time as CV had been moved to another secure location.

Meanwhile, additional investigation of the underlying domestic violence case was conducted. Deputy Ashley Boujikian responded to the Banks' residence on December 26, 2020, after CV had called, but was unable to contact either Banks or CV. Boujikian did note that CV's car tires had been slashed, and a tractor had probably been used to stack logs in front of CV's vehicle. These observations supported CV's allegations of events leading up to the physical violence of December 27, 2020.

In addition, on January 4, 2021, Detective Richard Donaldson interviewed CV's daughter Heaven Pratt (Heaven). During that interview, Heaven disclosed that several months earlier sheriff's deputies had arrested CV on Banks' property. At that time, Banks came out of his bedroom with a black pistol, and told Heaven he was going to shoot the deputies for arresting CV. She was able to dissuade Banks from acting and he put the gun away. Further investigation determined this incident occurred on June 26, 2020.

A deputy contacted CV on January 9, 2021, and she reported Banks had driven by the Sonora Gold Lodge in her vehicle the previous night. CV was then moved to another location and subsequent contact with CV indicated Banks had also driven by that new location.

On January 9, 2021, Detective Jeffrey Lee commenced writing a search warrant for Banks' residence and business based on the facts of the domestic violence investigation. The warrant was reviewed by then-Deputy District Attorney Cassandra Jenecke, and later approved by the on-call magistrate with an endorsement allowing for nighttime service of the warrant.

locate that individual to complete the arrest. An I&B allows other officers to complete that arrest upon contact with the suspect.

A threat assessment was compiled to determine what level of response would be necessary to serve the search warrant and to possibly apprehend Banks. This process included a review of his prior criminal history, which included the following information:

Year	Arrest/Conviction + Severity	Code Section	Code Title	Jurisdiction
1983	Felony Arrest	PC 245(a)(1)	Assault with a Deadly Weapon	Orange
1984	Misdemeanor Conviction	PC 415	Fight/Challenge to Fight in Public Place	Orange
2001	Felony Arrest	PC 422	Criminal Threats	Tuolumne
2001	Misdemeanor Conviction	PC 415	Fight/Challenge to Fight in Public Place	Tuolumne
2003	Misdemeanor Conviction	PC 415	Fight/Challenge to Fight in Public Place	Tuolumne
2004	Misdemeanor Conviction	PC 273.5(a)	Domestic Violence	Tuolumne

Also included in the threat assessment was a thorough review of the underlying domestic violence and kidnapping incident, which provided evidence of severe injuries to CV as well as strangulation. In addition, the statements from CV that Banks had threatened to kill her if she reported the domestic violence to law enforcement, and had made statements about killing law enforcement personnel if they tried to apprehend him were factored into the assessment.

Then-Lieutenant David Vasquez was the Crew Commander for the Crisis Response Unit and on the date of the operation, he was called in to oversee the potential SWAT operation. His first task was to review all materials and reports associated with the underlying domestic violence case as well as any information pertaining to Banks. Vasquez looked at Banks' criminal history. He then directed Lee to re-interview CV to get additional information about Banks and the residence to assist with the compilation of an updated threat assessment matrix.

Lee interviewed CV, who was accompanied by her daughter Heaven. CV disclosed Banks had a gun safe in his residence with a single shot .22 caliber pistol, and was in possession of a 16-gauge shotgun, a .410 shotgun and a .22 pistol at his business. CV mentioned Banks had been carrying the .22 pistol on his person since the domestic violence incident. CV reiterated to Lee that Banks told her he would kill law enforcement and would go out in a gun battle. CV mentioned Banks' residence had a perimeter gate that was usually locked. During the interview, CV drew a diagram of Banks' residence so law enforcement would know the property layout. CV also informed Lee that Banks had surveillance cameras located at the property and noted those locations on the

diagram. Heaven interjected to Lee that Banks would use a firearm if law enforcement showed up, and said she once heard Banks say, "I might fucking shoot a cop. They're on my property," on a prior occasion when sheriff's deputies were on his property to arrest CV.

This information, combined with his review of all intelligence TCSO had collected, led Vasquez to score Banks' threat assessment level at 30. Riley had also completed a threat assessment, which he shared with Vasquez, that put Banks at 32. Both scores were considered high and supported a SWAT response to serve the search warrant and effectuate arrest of Banks.

Vasquez began putting together a "running OPS plan," meaning the plan that would be used by the SWAT team to effect an arrest was subject to modifications based on any updated information additional investigation might uncover. As this process was undertaken Vasquez directed Corporal Alex Zanini and Deputy Daniel Newman to Banks' business on Powder House Road and his residence on Boitano Road to see if there were any vehicles associated with Banks that would support his being at either location. No vehicles were observed at Banks' business, but CV's vehicle was observed at his residence. Based on CV's interview, law enforcement knew that Banks was using CV's vehicle at the time that this investigation was taking place.

Banks' residence was located on a hill that afforded anyone at the residence the opportunity to see someone approaching. There was also a fence surrounding the property, and a gate that was usually kept locked. Consequently, any approach by the SWAT team would be visible and any element of surprise would be negated. Based on this information, operational leadership had Newman and Zanini park their vehicle several driveways from the entrance to Banks' property to maintain surveillance. They were instructed to stop any vehicle approaching or leaving the premises.

Prior to the departure of the SWAT team, Lieutenant Vasquez convened a briefing, which provided each team member with information about the following items:

- The domestic violence and kidnapping allegations that Banks was accused of and the level of violence he had committed;
- Banks' attitude towards law enforcement, his prior history of violence, and his reputation for being armed; and
- The characteristics of Banks' property and the concerns those characteristics presented.

The team was also shown photographs of Banks and diagrams of the residence. This briefing was where the team members were informed of the OPS plan. The OPS plan took into consideration the following information:

- The layout of Banks property including the locked gate and the uphill approach that allowed him to see anyone approaching;
- The presence of surveillance cameras that would enable Banks to see the deputies as they approached the front door;
- Banks' threats to engage and kill law enforcement if they came after him;
- Banks' prior history of violence;
- The statement of Heaven Pratt that Banks had previously retrieved a gun at his house when deputies were there to arrest CV and told Pratt he would shoot them;
- The level of violence Banks had committed on CV in the underlying domestic violence case; and
- Reports that Banks possessed firearms and had been carrying around a pistol in the recent days or weeks leading up to the mission.

The SWAT team consisted of Sergeant Riley, Deputy Cody Skellenger, Deputy Michael O'Brien, Sergeant Romel Cuellar, Zanini, Newman, Lee, Corporal Nathan Yorston, Deputy Christian Favela, Deputy Tyler Wend, and Sergeant Jacob Ostoich. Each member of the SWAT team was dressed in standard TCSO attire, consisting of the following: green pants, green shirt with sheriff patches on each arm, a black ballistic plate style SWAT vest with shoulder pads and yellow sheriff's markings, a black helmet and green earmuffs.

The specific details of the OPS plan called for the Bearcat (an armored vehicle used by SWAT that could hold multiple deputies and specialized equipment), operated by Favela, and a Chevy Tahoe, driven by O'Brien, to enter onto the grounds of the property and stage at the front of the residence with the vehicles' lights illuminating the front of the residence. Lights and sirens on the vehicles would announce the presence of sheriff's deputies. After a brief blast of the sirens, Favela would then commence multiple announcements informing Banks that sheriff's deputies were at the residence and for him to come out. During those announcements the SWAT team would move to various locations on the property based on their assignments. Other deputies (including Zanini and Yorston) would secure the perimeter of the property in case Banks attempted to flee. The main SWAT team would line up in a "stack," a single-file line with individual deputies assigned with specific jobs. The "stack" was comprised of the following deputies, in their order in the stack: Skellenger, Wend, Cuellar, Newman, Lee, Riley, Ostoich and O'Brien. O'Brien was the team's "breacher," tasked with breaching the front door of the residence if necessary. Newman's role in the stack was to be armed with, and use if prudent and practical, less-lethal force tools. Ostoich was also the team medic, charged with providing emergency medical response if necessary. The stack would move to the front door of the residence where forced-entry would be undertaken if Banks did not voluntarily comply with the announcements to come out. Corporal Zanini and

Deputy Newman were briefed on the plan via phone call as they were already on scene.

After the briefing, the SWAT team left the Sheriff's Office in the Tahoe and the Bearcat. Both vehicles were equipped with red and blue lights and sirens, as well as distinctive law enforcement marking.

While the SWAT team was enroute to the scene, Zanini and Newman saw and heard a small pickup leaving Banks' property. After the pickup passed them, they stopped and detained Summer Pratt (Summer) and Derrick Lawrence (Lawrence). Summer and Lawrence indicated Banks was currently the only person at the house and there were two dogs in the house. They stated that Banks was not a fan of law enforcement and would likely not be compliant with any law enforcement commands. Summer also said she believed Banks had weapons, but she did not know much about them and had not seen them.

Shortly thereafter, the SWAT team arrived and Zanini and Newman took their places in the Bearcat. The two vehicles then proceeded to the entrance of the driveway, up the hill and through the gate. At this time, both the Tahoe and the Bearcat activated their lights and chirped their sirens. The lights consisted of the vehicles' headlamps and blue and red flashing lights (known as "wig wags"). As the SWAT team members alighted from the vehicles and assumed their positions, Favela commenced a series of announcements with the Bearcat's loudspeaker. The announcements conveyed that the Tuolumne County Sheriff's Office was at the residence and that Banks should come out. The sirens were not deployed during the announcements so they would be clearly heard. The front of the residence was illuminated by the vehicle's headlights, the red and blue law enforcement lights and some lighting from the residence's porch lights.

The two perimeter teams headed off in their scheduled directions. The main team lined up in their stack order and slowly proceeded along a cement walkway towards the front door. As they moved on the walkway and around the garage the group approached a series of large windows. The team was aware there were surveillance cameras positioned so that Banks could see anyone approaching along the walkway. The deputies, in order in the stack, were armed as follows:

- Deputy Skellenger was armed with a department-issued AR-15 rifle and a personally owned Glock 34 9mm sidearm;
- Deputy Wend was armed with his department-issued AR-15 rifle and a Glock 17 sidearm;
- Sergeant Cuellar was armed with his department-issued [AR-15] SWAT rifle, a Kaufman Tactical 223-556, and a Glock 17 sidearm;

- Deputy Newman was armed with his department-issued less-lethal, 40-millimeter single launcher with 40-millimeter sponge rounds and department-issued Sig Sauer P320 sidearm;
- Deputy Lee was armed with his department-issued AR-15 rifle and a Sig Sauer P320 sidearm;
- Sergeant Riley was armed with his department-issued AR-15 and a personally-owned Glock 45;
- Corporal Ostoich was armed with a department-issued AR-15 rifle and a personally owned Kimber 1911 pistol; and
- Deputy O'Brien was armed with his department-issued AR-15 rifle and a Sig Sauer P320 sidearm.

As the stack moved towards the front door, deputies passed by three large windows that looked out from the living room. All three windows had coverings that prevented deputies from seeing inside the residence. Riley gave the order to have the windows broken in and to remove the curtains or partitions that obscured the deputies' view of interior. Once the windows were broken, the curtains were pulled down, and the interior of the house was visible.



Photo 1 – Color photograph of the front porch of Banks' home with front window broken and drapery pulled out and down the side of the wall.

The room was lit by a TV that was on and some other lighting. As the stack approached the front door, a figure was observed emerging from a hallway that accessed the living room. A couch in the living room obscured the lower half of the person, but his upper half was visible.

As the figure emerged from the hallway into the living room, several deputies realized it was Banks. They further observed he was armed with a black pistol. They then saw him raise and point the black pistol in the direction of the front door. At that point, several deputies – specifically Riley, Cuellar, Skellenger and O'Brien – fired their weapons at Banks.

Banks fell behind the couch and deputies ceased firing. Banks was given commands to show his hands as deputies raced to open the front door and make sure the situation was safe. Once inside the residence, deputies made sure Banks was no longer armed and began to provide him with medical aid. The couch that was located where the hallway intersected the living room, and which had concealed Banks' lower body from the deputies' vision, was quickly moved out of the way to enable deputies and first responders to have access to Banks to treat him.



Photo 2 – Color photograph of black couch from the direction of the front window showing the couch obscuring the view of bottom part of the wall and the lower portion of a deputy's body.



Photo 3 – Color photograph of the same couch from Photo 2 with evidence markers noting location of bullet holes in couch.



Photo 4 – Color photograph of the front of the same couch from Photo 2 with evidence markers noting location of bullet holes in couch.

Each involved deputy's statement about their actions just before and during the shooting are summarized below, in the order they were assigned in the stack.

- **Deputy Skellenger**: Deputy Skellenger was the first one in the stack and had arrived at the front door. Deputy Wend, in the second position, moved ahead of Skellenger to disable a security camera that was pointed in their

- direction. Skellenger then took a step back to Wend's position and had his rifle up for security. Skellenger then heard shots and turned to look inside the residence. Skellenger saw someone he recognized as Banks, with a pistol in his hand, as Banks was falling. Skellenger believed the gun was in Banks' left hand and he saw Banks sweeping the team with the weapon as he fell. At that time, Skellenger fired his rifle at Banks.
- **Deputy Wend**: Deputy Wend had arrived at the residence's front door and noticed a surveillance camera that was pointed at the stack. Wend moved ahead of Skellenger and began to pull on the wires of the camera to disable it. Shortly thereafter, Wend heard and felt Skellenger discharging his rifle. After the shooting stopped, Wend heard deputies giving commands to Banks. Wend did not fire his weapon.
 - **Sergeant Cuellar**: Sergeant Cuellar was in the process of breaking a window and removing a shade that covered the entire window. Cuellar saw inside the living room, which he described as lit by a light and a television. He then began making announcements, "Mr. Banks, Sheriff's Office, come out with your hands up." Cuellar then saw Banks come out from a hallway and Cuellar then said, "Hey, let me see your hands." Cuellar then saw Banks raise a black pistol, which he described as being in Banks' right hand. At that point, Cuellar opened fire with his rifle. Cuellar saw Banks point his pistol in the direction of Skellenger and Wend (located at the front door ahead of Cuellar) and then saw Banks begin to rotate towards Cuellar. Cuellar continued to fire until Banks fell behind the couch.
 - **Deputy Newman**: Deputy Newman was the less-lethal component of the stack. He had stepped back from the stack to allow deputies to "break and rake" (break a window and remove any obstruction to allow team members to see inside) the front windows of the residence and to provide protective cover to those deputies. He then heard team members shooting. Just prior to the shooting Deputy Newman briefly looked inside the living room and recalled seeing a television on. He did not see Banks.
 - **Deputy Lee**: Deputy Lee saw Banks after the windows had been broken out and partitions removed. Lee first saw Banks when Banks was standing inside the living room. Lee then recalled seeing the side profile of a gun, similar to a 1911 (a model of pistol first manufactured by Browning), that Banks was pointing in the general direction of Sergeant Riley, Deputy O'Brien, and Sergeant Ostoich. Lee heard a volley of gunfire and saw Banks fall. Deputy Lee did not fire his rifle.
 - **Sergeant Riley**: Sergeant Riley was the team leader and in the sixth position of the stack. Riley had given orders for the front windows to be

broken, and partitions removed to allow the team to see into the living room. He then gave orders to have the front door breached. As Deputy Wend was trying to kick in the front door, Riley saw Banks coming down the hallway, although he could only see Banks' upper thighs and above due to a couch obscuring the hallway. Riley described Banks as extremely white, which contrasted sharply with the black gun he saw in Banks' hand. Someone in the team began yelling "hands, hands" and Riley saw Banks raise the pistol up. Banks was pointing the pistol at the front door where Wend and Skellenger were located. At that point Riley began firing his weapon at Banks. Banks fell to the ground, Riley stopped firing and gave the command to "cease fire."

- **Sergeant Ostoich**: Sergeant Ostoich did not see Banks until the firing commenced and he saw Banks go down. Ostoich did not fire his weapon.
- **Deputy O' Brien**: Deputy O'Brien was the last team member in the stack and was tasked with breaking down the front door of the residence if necessary. As the stack proceeded towards the front door, O'Brien and other team members were directed to break the windows and remove the obstructions that were blocking deputies' sight into the living room. After the windows had been cleared, O'Brien could see inside the living room and he began to lift his rifle up to provide cover. At that point, O'Brien saw Banks appear at the edge of the entry of the hallway into the living room. O'Brien described Banks as walking in an aggressive manner and appeared angry. O'Brien could not see Banks' below the waist due to the presence of the couch, and O'Brien could not see Banks' hands. Someone in the stack was yelling at Banks, and then O'Brien heard "gun," and saw Banks' hands come up with a black handgun in one of his hands. At that point, O'Brien deactivated his safety and fired his rifle at Banks. O'Brien saw Banks drop, and heard a command to breach the door, which he did shortly thereafter.

All members of the SWAT team were interviewed on the 14th, 15th, and 21st of January 2021. Riley, Skellenger, and O'Brien were interviewed on January 14, 2021. Zanini, Newman, Vasquez, Lee, Yorston, and Favela were interviewed on January 15, 2021. Cuellar, Wend and Ostoich were interviewed on January 21, 2021. All the interviews were video and audio recorded.

Each deputy noted during their voluntary interviews that they were aware (1) of Bank's threat to shoot deputies if they came to his house, and (2) that Banks had been reported to be recently carrying a .22 pistol on his person. Sergeants Cuellar and Riley, and Deputies Lee, Skellenger, and O'Brien stated the sudden appearance of Banks and his sudden brandishing of the black pistol put them in fear for their safety and the safety of the other SWAT team members. They

believed Banks intended to shoot one or more of the deputies present and that the use of lethal force was the only option available to stop Banks.

Banks was struck several times, suffering multiple gunshot wounds. Medical records indicated the following injuries: a graze wound to the right shoulder, bilateral wounds to hands, a wound to bilateral buttocks, a fracture of the right thumb phalanx due to gunshot wound, and multiple bullet fragments lodged within left flank soft tissues and left gluteus maximus.

Immediately after the shooting deputies began to render medical aid to Banks. A protective sweep of the house confirmed there were no other people inside and scene preservation was commenced. All SWAT members who discharged their weapons were separated and provided "battle buddies" (another deputy to make sure all officer-involved-shooting (OIS) protocols were followed). The scene was then taped off, and a crime scene log was initiated.

Members of the TCSO Investigations unit were dispatched to conduct an OIS investigation and the Tuolumne County District Attorney's Office Investigation Bureau was called to the scene to initiate a parallel investigation. These actions were done in accordance with the local Tuolumne County Officer-Involved Shooting Memorandum of Understanding and Protocol.

Once the SWAT team members who had discharged their weapons were separated, they returned to the patrol office for ammunition inventory, also known as round count, which was completed by Sergeant Matthew Stuart. A physical inspection and count were completed and documented through photographs of each involved officer plus their respective weapons and remaining ammunition. Round count revealed the following information:

- Sergeant Riley fired his rifle ten (10) times,
- Sergeant Cuellar fired his rifle eighteen (18) times,
- Deputy Skellenger fired his rifle four (4) times, and
- Deputy O'Brien fired his rifle seven (7) times.

The pistol Banks had brandished was initially found close to where he had fallen and was quickly moved to a chair in the living room, away from Banks. The gun's magazine was then detached. A subsequent investigation determined the pistol suffered damage to the barrel and slide from a .223 rifle bullet. This damage indicated that Banks was pointing the weapon in the direction of the members of the stack at the time he was shot. The pistol also had a hole in the left side of the pistol's slide, which was either the result of a second rifle round or collateral damage from the round that went into the barrel. The weapon was a .22 caliber ISSC brand, M22 model pistol with serial number ABA530. It was determined to be unregistered. The pistol was loaded at the time it was examined, with one (1) round in the chamber and eight (8) rounds in a magazine. The pistol's capacity

was ten (10) rounds, but as only nine (9) rounds were accounted for a search was undertaken for an expended round or casing. None was found, so it is unknown if Banks fired the weapon during the incident.



Photo 5 – Color photograph of the .22 caliber ISSC brand, M22 model pistol recovered from Banks with the pistol's magazine detached and showing bullet hole in the pistol's slide and blood on the pistol's grip.

Shortly after the incident, the property was inspected and casings from the deputies' weapons were located, noted, and collected. All deputies at the scene fired .223 caliber ammunition. A total of thirty-three (33) .223 caliber shell casings were collected outside the residence. An additional .223 caliber shell casing was found on the dining room floor near the living room window furthest from the front door. An expended .223 rifle round was located on the hallway carpet next to a cabinet. Two additional expended .223 rifle bullets were located on the window frame. In addition, approximately 99 bullet holes were documented inside the residence indicating a majority of the bullets passed through multiple objects. The location of the casings and the bullet holes corroborated the deputies' statements that they fired their weapons from outside the residence.

An inspection of the house later located a rifle, identified as a Winchester Model 55 .22 LR rifle, in Banks' bedroom as well as 9mm and .22LR ammunition, and a 12-gauge shotgun shell.

The video DVR surveillance system located at Banks' house was examined to see if any footage existed of the incident. The system was set up as a recycling

hard-drive. It was determined that three cameras were connected at the time of the incident with one hour of footage on two cameras and fourteen minutes of footage on a third camera. There was a significant amount of video from 2016 that appeared to belong to the previous owner (based on date and location), and this allowed only a small portion for more recent footage. Tuolumne County Sheriff's Detective Skyler Waid searched for any footage on the day of the incident, and nothing was found that captured the actual incident. One camera showed footage of deputies processing the interior of the residence post-shooting, another camera located above the garage recorded the driveway which was away from the incident. Another camera contained footage of the Dodge Challenger located in the garage. The captured footage was put on a disc and booked into evidence.

LEGAL ANALYSIS

A review of this incident was conducted pursuant to, and in accordance with, the joint protocol between the Tuolumne County District Attorney's Office and all local law enforcement agencies, which calls for the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force by law enforcement.

Possible criminal charges against the deputies involved in this case include attempted murder (Penal Code section 664/187) or attempted manslaughter (Penal Code section 664/192). However, convicting an officer of these charges would necessitate a finding beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Banks* (1976) 67 Cal.App..3d 379, 383-384.) Such possible legal justifications pertinent in this matter involving law enforcement personnel and the use of force where self-defense and defense of others are applicable are found in Penal Code sections 196 and 835a.

The People, in this case represented by the Tuolumne County District Attorney's Office, cannot file a criminal complaint unless an offense or offenses can be proven beyond a reasonable doubt. To convict any of the deputies involved in the shooting of John Henry Banks on January 9, 2021, the People bear the burden of overcoming the constitutionally protected presumption of innocence and furthermore, proving the shooting was not in self-defense or in the defense of others, beyond a reasonable doubt. Therefore, the ultimate question in this case is: "Can the People disprove lawful self-defense, or defense of others, beyond a reasonable doubt?" Based on the law and the evidence reviewed in this case, the answer is no.

Applicable law

Prior to the enactment of AB 392 (which amended Penal Code sections 196 and 835a commencing on January 1, 2020), this incident would have been judged

simply from the subjective belief of the officer or officer(s) at the moment of the shooting. The U.S. Supreme Court has repeatedly directed that we do not second-guess the officer when reviewing such split-second decisions. However, AB392 disregards that directive and forces us to do so.

Penal Code section 196, as amended in 2020, now states: Homicide is justifiable when committed by peace officers when the homicide results from a peace officer's use of force that is in compliance with section 835a.

Penal Code section 835a(a)(1) states:

[T]hat the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive force by officers acting under the color of law.

Penal Code section 835a(a)(3) goes on to state:

[T]hat the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

Penal Code section 835a(c)(1) permits officers to use deadly force when necessary to protect themselves and others from the "imminent threat of death or serious bodily injury."

The imminency of the threat of death or serious bodily injury is defined in Penal Code section 835a(e)(2):

[T]hat the 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, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

The totality of circumstances means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Penal Code section 835a(e)(3)).

Judicial Council of California Criminal Jury Instruction No. 507 (most recently updated in 2022), entitled “Justifiable Homicide: By Peace Officer,” is the applicable jury instruction based on the facts in this instance. The People bear the burden of proving beyond a reasonable doubt that the attempted killing was not justified. If the People do not meet this burden, the peace officer must be found not guilty.

The instruction notes that an attempted killing is justified, and therefore not unlawful, if the attempted killing was committed while a peace officer either:

- (A) Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant or another person, or
- (B) Reasonably believed, based on the totality of circumstances, that:
 - (1) the suspect was fleeing,
 - (2) the force was necessary to arrest or detain the suspect for a crime,
 - (3) the commission of that crime created a risk of, or resulted in, death or serious bodily injury to another person, and
 - (4) the suspect would cause death or serious bodily injury to another person unless immediately arrested or detained.

CALCRIM 507 further states, “ A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” It also defines totality of circumstances as “all facts known to the [peace officer] at the time, including the conduct of the [peace officer] and [the suspect] leading up to the use of deadly force.”

Additional Judicial Council commentary on CALCRIM 507 also notes, “In determining reasonableness, the inquiry is whether the officer's actions are objectively reasonable from the perspective of a reasonable officer on the scene. (*Graham v. Connor* (1989) 490 U.S. 386, 396.) Factors relevant to the totality of the circumstances may include those listed in *Graham*, but those factors are not exclusive. (See *Glenn v. Washington County* (9th Cir. 2011) 673 F.3d 864, 872.) The *Graham* factors may not all apply in a given case. (See *People v. Perry* (2019) 36 Cal.App.5th 444, 473, fn. 18.) Conduct and tactical decisions preceding an officer's use of deadly force are relevant considerations. (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 639.)

When determining whether the use of force was lawful, we consider “other available resources and techniques if reasonably safe and feasible to an objectively reasonable person.” (Penal Code section 835a(a)(2).) However, Penal Code section 835a(a)(4) goes on to explain:

[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and the totality of circumstances shall account for occasions when officers may be forced to make quick judgements about using force.

An officer’s right to self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 642.) If the officer’s beliefs were reasonable, the danger does not need to actually have existed. (CALCRIM 505 and 507.) The circumstances of each situation control what constitutes reasonable self-defense or defense of others. (*Id.*)

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 appropriate. In *People v. Reed* (1969) 270 Cal.App.2d 37, a robber pointed a gun at this victim and a deputy sheriff arrived on scene. (*Id.* at 41.) Before the robber could shoot, the deputy fired his weapon, wounding the robber. (*Id.* at 42.) The appellate court opined 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.” (*Id.* at 45.)

Under Penal Code section 835a(d) there is no requirement that the officer retreat, even if safety could have been achieved by retreating. (See also, CALCRIM 505.) The California Jury Instruction for self-defense expressly states that “a defendant’s belief that he was threatened may be reasonable even if he relied on information that was not true.” (CALCRIM 505.)

Lastly, the California Legislature declared in SB230 that police training and policies “may be considered as a factor in the totality of circumstances in determining whether an officer acted reasonably.” Agency policies “shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Senate Bill No. 230 (2019-2020 Reg.Sess.) section 1(g).)

FINDING: THERE IS INSUFFICIENT EVIDENCE TO CHARGE THE INVOLVED DEPUTIES WITH ATTEMPTED MURDER OR MANSLAUGHTER.

Deputies had an honest and reasonable belief that John Banks was going to shoot them.

To convict any of the involved deputies in the shooting of Banks, the People would have to prove beyond a reasonable doubt the deputies did not reasonably believe force was necessary to defend against an imminent threat of death or great bodily injury. Here, there are five reasons why there is insufficient evidence to carry that burden.

First, there is evidence to support the deputies' belief that Banks had a tendency to use violence. All the responding deputies were aware of the violence that Banks inflicted on CV on December 27, 2020, including kidnapping and strangling her. They had seen photographs of her injuries that were described as extremely severe, and those injuries were still visible almost two weeks after the domestic violence incident had occurred. This information and the attendant photographs had been included in the SWAT briefing that took place just prior to the shooting. In addition, a review of his criminal history showed multiple arrests and convictions for violence-related offenses, dating back to 1993. In their interviews, each deputy indicated they had been made aware of that information at the SWAT briefing.

Second, there was evidence to support the deputies' belief that Banks intended to use violence against the responding deputies. Deputies were aware Banks had threatened physical violence towards law enforcement if they came to his residence. Heaven Pratt had informed deputies of a situation that had occurred six months prior where Banks was at this house and had armed himself with a black pistol and told her he was going to shoot deputies that were there to arrest CV on an unrelated charge. In addition, Banks had told CV after he had assaulted her, he would "kill law enforcement and would go out in a gun battle" if they attempted to apprehend him. In each of their interviews, the deputies indicated they were aware of that information from the SWAT briefing.

Third, there is evidence to support that deputies had reason to believe Banks was potentially armed at his residence. CV had described a gun safe in Banks' bedroom and that he possessed a .22 pistol, a 16-gauge shotgun, and a .410 shotgun. In addition, she told deputies Banks had taken to carrying a .22 pistol on his person since he had assaulted her. Lastly, just prior to the SWAT operation Summer Pratt told deputies she knew Banks to have weapons at the house even though she had not seen them, that he did not like law enforcement, and that he would probably not be compliant with any commands. In each of their interviews, the deputies noted they were aware of that information from the SWAT briefing.

Fourth, there is evidence to support deputies' belief that Banks was armed with a deadly weapon as he entered the living room from the hallway. Multiple deputies

saw Banks emerge from the hallway and raise a small black pistol. In each of their interviews, the deputies noted that the weapon could be used to cause serious bodily injury or death.

Fifth, there is evidence to support the deputies' belief that Banks intended to use lethal force on them as he emerged from the hallway and brandished the weapon. The front of the residence was illuminated by law enforcement vehicles employing red and blue flashing lights. Repeated announcements had been made with a loudspeaker, calling Banks by name, identifying Tuolumne County Sheriff's deputies as being on scene, and commanding Banks to come out. By the time Banks emerged from the hallway, any obstruction on the living room windows had been removed, which allowed for sight out of the living room by Banks and into the living room by deputies. Several deputies described Banks pointing the pistol at members of the SWAT team. And when the pistol Banks was brandishing was recovered, it had a .223 round fired by a deputy in its barrel, demonstrating the gun was pointed towards at least one deputy when that shot was fired.

In assessing the totality of circumstances involved in this case, it is necessary to review the pre-shoot tactical decisions of the deputies to determine whether those decisions and actions artificially and significantly increased the likelihood that unnecessary lethal force would be used.

A review of the tactical pre-shoot decisions made by the SWAT team does not provide evidence those decisions artificially and significantly increased the probability that lethal force would be used. The SWAT team, and the deputies involved, created a detailed plan that considered all the information they had collected in their threat assessment matrix. The SWAT team stack had one deputy whose primary duty was to deploy less lethal force should it become necessary and practical, and that option was discussed at the briefing. The two-vehicle SWAT team employed both lights and sirens as they arrived on the property to warn Banks that they were law on his property. As the SWAT group was preparing to deploy multiple announcements were made via bullhorn designed to inform Banks that the Tuolumne County Sheriff's Office was on his property and that he needed to come out of his house. Shortly thereafter Banks appeared from the hallway armed with the pistol that he pointed at deputies. Based on the totality of the circumstances, there is insufficient evidence to prove Sergeants Riley and Cuellar, and deputies Skellenger and O'Brien did not have an honest and reasonable belief that Banks was going to shoot them or their fellow deputies.

Sergeants Riley and Cuellar, and deputies Skellenger and O'Brien, faced an instantaneous, life-or-death decision based on the information that had been made available to them – that Banks was a violent individual who had recently expressed a clear intent to harm or kill law enforcement – and Banks emerging

from the hallway with a pistol that he then pointed at SWAT team members. As such, there is insufficient evidence to file charges against the shooting peace officers.

Immediate use of force was necessary to defend against the actual and perceived danger that Banks posed to deputies.

There were no other available resources or techniques, including less-lethal options, safely and reasonably available for use by the deputies given Banks' possession of a firearm aimed at themselves and other law enforcement officers. We find that an objectively reasonable person would agree with that assessment. Deputies defended themselves and their fellow deputies from the perceived threat of being shot by Banks, making the firing of their weapons reasonably necessary. Banks had very recently made threats that he would engage in a gunfight with deputies if they came to his property. The SWAT team had arrived on his property and made their presence known via lights, sirens and multiple announcements. Banks' appearance in the hallway armed with a pistol, unannounced and within seconds of visibility of the living room having been established was very sudden. Banks then escalated the situation by raising the pistol and pointing it at deputies. Less-lethal force, present in the sponge rounds carried by Deputy Newman, would have been ineffective against what they perceived as the threat of being shot by a firearm. Additionally and significantly, the danger presented by Banks' actions was too sudden to give the deputies any chance to use less lethal methods to subdue Banks.

In addition, any contention the deputies could have retreated or reached a position of safety instead of shooting does not affect the conclusion of this report for several reasons. First, those who act in self-defense may stand their ground and are not required to retreat. (CALCRIM 505.) Moreover, the potential for the deputies to safely retreat is not supported by the evidence. The walkway, where the deputies were, was relatively narrow and there were no immediate places or objects that afforded cover. The only conceivable path of retreat would have been back down the walkway and would have exposed them to gunfire from Banks from his location.

Under the circumstances of this case, the use of firearms was reasonable, necessary and proportional to any imminent threat the deputies may have perceived.

Deputies did not use more force than was reasonably necessary.

At the time Banks emerged from a hallway into the living room with a pistol, SWAT vehicles had arrived minutes earlier at his property with full law enforcement lighting and chirping sirens. Within seconds of their arrival there had been repeated commands from the SWAT team, via bullhorn, instructing Banks

to come out of the residence. Those announcements continued as the SWAT team moved down the walkway and began to break windows to gain visual access to the living room. Based on those circumstances, there could be no question in his mind that law enforcement was there to arrest him and that they might use lethal force if he threatened them.

Despite those clear indicators of a law enforcement presence at his house, Banks chose to enter the living room armed and point his loaded pistol at deputies. The suddenness of his movements, combined with the danger they presented, gave the SWAT team members no opportunity to consider, much less stage and deploy a non-lethal response. None of the firing deputies utilized all of their available rounds in their rifles.

Deputies acted in compliance with Tuolumne County Sheriff's Office policies, which supports our finding that deputies acted reasonably.

Use of force by deputies employed by the Tuolumne County Sheriff's Office is governed by Policy 300 – Use of Force in the Tuolumne County Sheriff's Office Policy Manual.² Policy 300.4 and Penal Code section 835a note that where feasible, deputies shall make reasonable efforts to identify themselves as peace officers and warn that deadly force may be used, unless the deputy has objectively reasonable grounds to believe the person is aware of those facts.

Here, there is no evidence that Sergeants Riley and Cuellar nor Deputies Skellenger or O'Brien warned Banks they would use deadly force. However, there were objectively reasonable grounds to believe Banks was aware of those facts and the imminency of the threat made it unfeasible for deputies to give such a warning. The SWAT team had announced themselves through loudspeaker announcements along with the red and blue emergency lights and chirping sirens. When Banks entered the living room the line of deputies was a few feet away, illuminated by the lights of the walkway and existing lighting from the living room. Each SWAT member was carrying a rifle that was visible. Based on the totality of circumstances, there could not have been any question in Banks' mind that law enforcement was there to arrest him and that they would use lethal force when confronted with him being armed and pointing a pistol at them. Therefore, the failure of any of the firing deputies to warn Banks they would use lethal force would not change the conclusion of this report. Given the imminent threat, would it be feasible to give such a warning.

A subsequent review of the other portions of Policy 300 did not reveal any other questions related to agency policy compliance. Policy 300 mirrors and is consistent with the law as it stands today. As such, it appears likely that a trier of

² Policy 300, Tuolumne County SO Policy Manual. Accessed at <https://tuolumnecounty.ca.gov/DocumentCenter/View/12131/TCSO-Policy-Manual>.

fact (which would consist of a jury in a criminal trial charging the involved deputies with a crime), would find the operations to apprehend Banks was consistent with the Tuolumne County Sheriff's Office policies, mission, Penal Code 835a, and Government code section 7268.

Policy 408 – Crisis Response Unit in the Tuolumne County Sheriff's Office Policy Manual governs the operations of two specialized units including the Special Weapons and Tactics Team (SWAT). Here, per Policy 408.9 and 408.9.2(d), use of the SWAT team was appropriate to effectuate the service of a search warrant and to effectuate the arrest of a dangerous person, namely Banks. Deputy Betzenderfer and then Sergeant Riley and Lieutenant Vasquez did threat assessments of Banks and the available information warranted use of SWAT to serve the warrant and arrest Banks. Additional information was gathered and that information continued to support use of SWAT. All personnel participating in this operation were properly trained as SWAT operators.

Based on the above information and analysis, the compliance of Sergeants Riley and Cuellar, and deputies Skellenger and O'Brien with their agency's policies does not affect the evidence to establish the legal elements of self-defense.

CONCLUSION

The sworn members of the Tuolumne County Sheriff's Office, including those involved in this case, are dedicated public servants who work tirelessly and effectively to ensure the public is safe and that job often puts their lives in harm's way.

Deputies assigned to the apprehension of John Henry Banks faced a particularly difficult and potentially hazardous task. They knew he was a suspect in a significant domestic violence case, they knew he had made several statements about engaging in a shoot-out with any law enforcement showing up at his house to arrest him, they knew he had actually brandished a pistol in front of a friend when law enforcement had been at his house previously to arrest CV, they knew he did not like law enforcement in general, they knew the approach to his house would expose the SWAT team to being seen well in advance of arriving at his front door, they knew he had weapons at the house, and knew that he had reportedly been carrying a pistol on his person consistently since the domestic violence incident took place.

It is recognized by the Tuolumne County District Attorney's Office that domestic violence calls and threats of suicide-by-cop are some of the most dangerous for our law enforcement members. In fact, a 2016 study found that 14% of fatalities resulting from the use of lethal force by on-duty law enforcement officers from

2009 to 2012 in 17 states involved intimate partner violence and 18% were suspected “suicide by cops” incidents.³

Our investigation has determined that John Henry Banks was shot by at least one member of the Tuolumne County Sheriff’s SWAT during the attempted apprehension of Banks for felony domestic violence. Banks emerged from a hallway in his residence armed with a loaded pistol that he immediately, and without warning, pointed the gun at members of the SWAT team located steps away. That sudden action was perceived by deputies as a threat to their safety and the safety of other team members. It was at this point that lethal force was used to end the imminent threat of great bodily injury or death to the deputies. Given the totality of circumstances known to the shooting deputies at the time of the shooting, the only reasonable interpretation of the evidence supports that the use of self-defense by those named deputies was lawful.

The conduct of Sergeants Riley and Cuellar, and Deputies Skellenger and O’Brien, under any interpretation of the law, does not rise to the level of criminal conduct that warrants the filing of criminal charges. We now consider this matter closed.

Respectfully submitted,



Cassandra Jenecke
District Attorney
Tuolumne County



Eric Hovatter
Retired Assistant District Attorney
Tuolumne County

³ DeGue S, Fowler KA, Calkins C. Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009-2012. Am J Prev Med. 2016 Nov. Access at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6080222/>.