



NATIONAL TRAINING CONCEPTS

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Lt. Greg Runge
La Mesa Police Department
8085 University Ave,
La Mesa, CA 91942

Dear Lt. Runge,

As requested, I am submitting my opinions in regards to the Use of Force incident that occurred on the night of May 30/31, 2020. Specifically, this focuses on the deployment of a 12ga less lethal bean bag round by Det. Eric Knudson. The following opinions are categorized in response to the four issues you posed in your letter dated August 25, 2020. While I realize that an answer of “yes” or “no” may have been the intent, as I examined the issues I decided that a more expanded and comprehensive discussion in support of my responses was appropriate.

The development and/or discovery of additional information at a future date may lead to modification of these opinions.

#1: Was the use of force by Det. Knudson legally justified under California law?

#2: Was the Use of Force by Det. Knudson reasonable for current law enforcement standards?

Answer: “Yes” to both questions.

Opinion: Since the two questions closely parallel each other, I decided to provide analysis that addresses them in a joint format.

Det. Knudson's use of force (the 12ga less lethal shotgun) was reasonable under the 2019 revised version of 835a (b) PC. Specifically, this section states:

Any 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.

Similarly, the La Mesa Police Department Use of Force Policy (#413) states:

It is the policy of this department that officers shall use only the amount of force which reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Facts unknown to an officer, no matter how compelling, cannot be considered in later determining whether the use of force was justified.

I teach a California POST certified Less Lethal Instructor course. To stay current, this program has constantly evolved since its first presentation in 2002. Each student is provided with a comprehensive manual. Within the context of "current law enforcement standards", it is relevant to provide a quote from the existing Los Angeles Police Department's policy as incorporated into that manual:

The courts have held that Less-Lethal force options are "capable of inflicting significant pain and may cause serious injury." Therefore, consistent with the Los Angeles Police Department's Use of Force Policy, Less-Lethal force options are only permissible against a subject when:

- **An officer reasonably believes that a suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm.**

- **An officer may use the Bean Bag shotgun or the 40mm LLL as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others.**

In this case, short of failing to act, the only reasonable force option available to Det. Knudson was the use of the less lethal shotgun. With the exception of lethal force (which would be unreasonable) there were no other force options available that could be an effective tool in dealing with the specific act of violence by Ms. Furcron as observed by Det. Knudson. I believe that this use of force was legally justified and reasonable under current law enforcement standards.

To reach this conclusion, I compared Ms. Furcron's Facebook video with the Body Worn Camera videos from Sgt. Gay, Det. Knudson and Det. Gremillion. The Facebook video clearly shows Furcron's hostile intent not just at the incident location but constantly prior to her injury. As she speaks into the camera, her state of mind is clear: "They probably trying to burn down the La Mesa Police station. Burn that mother fucker down.", "Tear all this shit up" and repeatedly calling the police "murderers".

While under the U. S. Constitution, Furcron had the right to use such language and to protest peacefully, the video also demonstrates her hostile intent. Just prior to Det. Knudson's use of force, Furcron, along with a few other rioters, was at the leading edge of the crowd confronting the police skirmish line. She was focused on these officers. What raises the bar in this evaluation is that she then escalates from aggressive language to an act of violence that reflects her mind set. In her hand she holds a can. Furcron throws this at the line of police officers in front of her. (Others around her had been carrying out similar assaults with a variety of projectiles.) Once she took this step, she crossed the threshold into criminal activity rather than Constitutionally protected rights. She was in violation of California Penal Code section 241 (c)—Assault on a Peace Officer

By way of contrast, a review of the BWC videos from the officers involved—including Det. Knudson—highlights their professionalism within the law and

current law enforcement standards during the incident. For example, Knudson's video runs approximately four hours. During this time, we see the environment he and the other officers were exposed to. At times there is a constant rain of various projectiles being thrown at the officers by the hundreds of individuals confronting them. At one point the rioters pulled down the American flag in front of La Mesa Police Department and draping it over the police memorial, attempted to start a fire. The volume of noise including obscene and insulting language rivals the influx of projectiles. Adding to this setting, even before chemical munitions were deployed, the officers had donned their gas masks. Functioning while wearing this mask can create greater psychological and physiological demands on each officer involved. Without a doubt, this was a tense, uncertain, and rapidly evolving incident. The restraint by all officers reveals their level of self-control and proper decision making during this very challenging event.

At some point, Det. Knudson and other officers were sent to the Dispatch balcony. They were assigned to protect the innocent civilian employees inside. This was due to projectiles being thrown by the rioters through the windows and into the police Dispatch Center. The BWC videos show the officers in position at the balcony wall. They are seen and heard monitoring the crowd's actions while more projectiles are being thrown at them and the Dispatch Center windows. At times one officer or another is seen pointing to rioters as if identifying those throwing objects at them. The officers' BWC videos converge at the time stamp 3:14:22. Det. Knudson is standing guard at the balcony along with the other personnel. Det. Knudson is armed with a 12ga Less Lethal shotgun but has yet to fire any rounds. In my opinion, the officers are showing significant restraint.

At the above time stamp however, Det. Knudson is seen to raise his less lethal shotgun. He fires only one round. Through his gas mask he then says something to the effect of "That guy. That's the guy throwing things. The guy that's down right now." This corresponds with Ms. Furcron being struck by the bean bag. It reflects Det. Knudson's belief that he was targeting a male rather than a female. As per policy, Det. Knudson's use of force was relayed to the supervisors present.

It is my opinion that these recordings fairly and accurately depict what happened at this point. Despite a long and challenging day, Det. Knudson was in full control of his emotions and use of force decision making at the time he deployed the less lethal shotgun. It is clear that Det. Knudson's intent was to prevent Ms. Furcron from making any further attempts at injuring law enforcement personnel. The above quotes make it evident that he believed Furcron had already thrown more than one projectile at officers. A passage from the incident's Use of Force report is relevant here: "The purpose of deploying those less lethal force options was to stop the subjects from continuing to throw rocks and to prevent injury to Law Enforcement and other protesters." Det. Knudson's action was a focused, specific response due to the observed aggressive action by Furcron towards nearby police personnel. He held his fire until her behavior drew his attention, standing out from the crowd as she committed the assault.

From the Facebook video, we know she was holding two objects. One was the can she hurled at the police skirmish line. The other was her cell phone. However, it is reasonable under the conditions that the latter could instead be perceived by Det. Knudson as another dangerous projectile that Furcron would next throw at the officers. Added to this is the fact that numerous decorative rocks from a nearby landscape area had already been picked up and thrown at the officers by other rioters. Based on Furcron's hostile intent and demonstrated aggressiveness, it is not a far stretch to consider that she would have continued her actions. From Det. Knudson's perspective, it is a reasonable assessment that she would throw the other object presently in her hand at the officers. This could then possibly lead to her next arming herself with the landscape rocks for continued assaults. It is clear that other rioters around her had done the same.

Clearly, Det. Knudson's intent was to stop further assaults as well as possibly facilitate Furcron being taken into custody. Again, it is my opinion that Det. Knudson was reasonable in his use of force against Furcron under California law and current law enforcement standards. I believe this opinion is also supported by the La Mesa Police Department's Policy:

Use of Force Policy

While various levels of force exist, each officer is expected to respond with only that level of force which reasonably appears appropriate under the circumstances at the time to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

Question #3: Was the use of force by Det. Knudson conducted within the guidelines of his training?

Answer: My analysis started with Det. Knudson's documented participation in the Department's Less Lethal Program. Within this context, my answer to the above question would in part be **"Yes"**.

Opinions: This response conforms with the two items below:

- Less Lethal Policy (#627) states that "Department approved less-lethal weapons are used to stop aggressive behavior which, if not stopped, may result in serious injury or death." In my opinion, Det. Knudson's intent when he used the less lethal shotgun was in compliance with Department training and policy.
- Det. Knudson stated that his point of aim was center mass. When I interviewed him, he explained that by this he meant that his intent was for the bean bag to impact Furcron at the abdomen area. This is consistent with the La Mesa Police Department's less lethal training power point. Specifically, Slide # 7 shows the abdomen as within the "Primary Target" zone for bean bag deployment.

However, beyond these issues, my response to Question #3 is **"Inconclusive"**. There are identified issues both with Det. Knudson's training and at an organizational level that led to this answer.

Opinions:

- The Department Less Lethal policy (#627) refers to "trained and qualified" personnel having approval to use less lethal weapons. I could not find a definitive indication that Det. Knudson "qualified" in the use of the 12ga Bean Bag shotgun. This issue could just be

semantics. If so, it should be addressed through clarification of the qualification question: Does completion of a training session “qualify” that participant or is a qualification course of fire required to attain this status? To draw a parallel, officers carrying firearms are often trained and then also put through a qualification course of fire to validate the training. Such a progression is incorporated into the live fire portion of the NTC Less Lethal Instructor course.

- The last time Det. Knudson received less lethal training is ambiguous. Department policy states:

“Refresher training in the use of less-lethal weapons should be accomplished each year. When practical, refresher training should be incorporated into the quarterly range and defensive tactics training plans. Refresher training should include a practical skills demonstration.”

In reviewing the provided material, one document states that Det. Knudson last received less lethal training in March of 2018. I was subsequently provided with a training report dated October 1st, 2018. While this did not specifically address less lethal training, attached to it was a November 29th, 2018 e mail. Apparently in reference to the October training, this e mail documented less lethal scenario training, firing from the 10 yard line. The documentation does not list by name those who successfully completed the program. It only lists those personnel who did not.

I was also provided with a La Mesa Police Department Training Unit Firearms Qualifications report. This document specifically addresses Det. Knudson’s training and is dated September 11th, 2018. It records that he received training on both his duty and back up handguns. There is no indication of less lethal shotgun training taking place during this same session.

Another short document provided is titled **“20015724 LMPD Use of Force Det. Eric Knudson”** This gives a brief list of the detective’s training concluding with the statement: “Detective Knudson completed the required less lethal training at LMPD in 2018. This

course is required every two years.” The latter time frame contradicts the Department policy for less lethal training as stated above.

Det. Knudson told me that his last less lethal training was in March of 2018. He stated that normally this consists of firing one or two rounds. He did not recall any specifics regarding distances other than shooting from 20’ at a silhouette target where the extremities were the point of aim.

A review of Det. Knudson’s POST Training Profile shows that he received four hours of “Less Lethal Weapons” training on March 1, 2018. This also shows that on February 2, 2018, he received four hours of firearms training. Based on Department policy, it is possible that less lethal training was included in this session. Similarly, his departmental training record shows two hours of firearms training on March 29, 2019. Again, there is no indication that less lethal was included. The March 1, 2018 less lethal training on his POST Training Profile is not documented on this Department training record.

- Apparently, Det. Knudson received at best only limited training regarding deploying less lethal at long distances. One reference I found in the provided materials was again from the Department power point presentation dated February/March 2018. Slide #8 indicates that the recommended distance for the 12ga less lethal bean bag is 0-60 feet. There appears to be no prohibition against or discussion about deploying at longer distances. It is relevant to note that the distance from Det. Knudson to Furcron’s position was over 90 feet. From the number of expended 12ga bean bag casings recovered from the Dispatch balcony, it appears likely that other officers may have been firing at suspects who were also beyond the 60 foot mark.

The lesson plan for the Department’s four hour less lethal weapons training program has a reference to “Limitations of weapon platform” While it can be inferred that this might include a discussion of

distance shooting, there are no details listed to better grasp the true nature of how this topic was discussed—if at all—with those attending.

- The less lethal shotgun used by Det. Knudson was not a La Mesa Police Department weapon. Instead, it was a San Diego Sheriff's Office weapon. While the two shotguns are similar, there are differences in the way they are marked as less lethal weapons. More importantly, the sight radius (distance between front and rear sights) and the type of sights on the two shotguns are different. The SDSO shotgun appears to have been equipped with a front stock weapon mounted light while the La Mesa P.D. shotgun I was shown did not have such a light.

Apparently, there is no policy, protocols or training to address this use of another agency's weapon. While the circumstances leading to Det. Knudson's use of the SDSO shotgun were, to say the least, extraordinary, I could not find any indications in training documentation or policy that this was an acceptable practice. To offer an analogy, it would most likely be unacceptable for an officer from one agency to use another department's M-4 carbine even if that officer was trained on his own agency's approved and similar rifle. This is especially relevant if the two weapons had different sighting systems as is the case here.

In addition, the SDSO shotgun's chain of custody after its use is a serious matter. We know that Det. Knudson was given the shotgun by Det. Butcher. The latter's BWC video records that at the Axion time stamp of approximately 1:42 he was in the La Mesa PD basement garage. At this point he is approached by a San Diego Sheriff's Deputy who has a less lethal shotgun in a carrying case. (In the video, the deputy's cloth name tag is hard to distinguish but it appears to possibly be "J. Burch" or something similar.) Det. Butcher takes this shotgun up to the Dispatch balcony and eventually it is transferred to Det. Knudson. At a supervisory level, it is unclear whether or not Sgt. Gay and/or Sgt. Purdy were aware of the SDSO shotgun being used by La Mesa P. D. personnel.

What happened to this shotgun after Det. Knudson turned it over to Officer Sampugnaro is unresolved. At the Axion time stamp of 3:38 the latter's BWC video #3 shows him in possession of what appears to be the SDSO shotgun. He retains this until almost the end of the video. At some point prior to the conclusion, he no longer has it in his possession. It does not show if he set the shotgun down or turned it over to another officer.

In essence, this incident became an Officer Involved Shooting event when cries that Furcron had been "killed" and "You shot her in the face" were heard. This was followed by her seen on the ground and then carried to a vehicle. As soon as possible after the officers became aware that Ms. Furcron had possibly been injured, the SDSO shotgun should have been isolated as evidence. While I was provided with an SDSO Less Lethal shotgun for inspection, this was only a sample. The location and status of the actual shotgun used by Det. Knudson is unknown. Det. Knudson told me that he did not note any differences in the SDSO shotgun when he was handed it. However, the dissimilarities between the two less lethal shotguns constitute a critical issue. In fact, this may be contributory to the 12ga less lethal bean bag round not impacting at its intended target area.

- The La Mesa P. D. Less Lethal Policy states:

'When less-lethal weapons are issued, Officers will inspect the weapon for functionality and approved less-lethal ammunition'.

While it is evident that Det. Butcher loaded the less lethal shotgun in question, there is no indication that Det. Knudson carried out an inspection of the weapon as specified. In our interview, Det. Knudson stated that he accepted the shotgun from Det. Butcher without carrying out such a procedure. Additionally, in the Use of Force report Det. Knudson states "As this was occurring, I put six additional rounds of beanbag on the outside holder of the stock of the beanbag

shotgun.” Det. Knudson did not remember what brand or type these rounds were.

From the physical evidence currently available, it appears that both West Coast training rounds and CTS Super Sock duty rounds were used at the Dispatch balcony by officers including Det. Knudson. Exactly which brand of sock round struck Ms. Furcron cannot be determined until that projectile is made available for inspection. The West Coast training bean bags were originally made with blue cloth. However, this has since been changed to an off white material with an interior blue label. The bean bag that impacted Ms. Furcron does appear in photographs and video to be off white in color.

I was provided with three photographs of the Furcron bean bag. It was difficult to see the bag’s details due its condition and the plastic bag it was packaged in. I initially thought that this was not a West Coast training bag.

I subsequently spoke with San Diego District Attorney’s Investigator Juan Cisneros. We discussed the identification of the bean bag. He provided me with photos that I had not previously seen. These were of unused La Mesa P.D. West Coast training bean bag rounds. With that, I realized that I had initially evaluated the bag on the basis of the original West Coast training bean bag’s blue cloth color. With that, I remembered that the new version of this bag is off white in color.

Investigator Cisneros then directed me to Det. Butcher’s BWC video. In it at the Axion time stamp of 1:38, a sequence of events begins: At the start, Det. Butcher has been trying to find more bean bag rounds. Another officer shows him a cabinet containing the rounds. As Det. Butcher puts these into a box, the officer informs him that they are training rounds. Det. Butcher reacts to this fact acknowledging their nature. He then walks through the station and at one point contacts a group of San Diego Sheriff’s deputies. Among them is what appears to be the same deputy who provided him with the SDSO shotgun moments earlier. (Time stamp 1:42 as previously noted.) Det. Butcher gives some of these training rounds to the deputies.

Det. Butcher next proceeds to the Dispatch balcony. He tells others that he has training rounds with him. He is told to load them into the SDSO shotgun. Before doing so, Det. Butcher confirms if the training rounds are to be used and again receives instructions to do so. Because of the helmets, gas masks and riot gear everyone is wearing, I could not identify who gave Det. Butcher this instruction.

Det. Butcher maintains control of the shotgun until the Axion time stamp of 2:35 when he turns it over to another officer. This is well before the 3:14 time stamp when the round is fired at Furcron. Again, it is difficult to identify the officer but this may have been Det. Knudson. Det. Butcher is then provided with what appeared to be a La Mesa PD less lethal shotgun. He retains this for the remainder of the video.

- The Department Less Lethal policy also states:

Officers assigned to Investigations, who have been trained in the proper use of less lethal weapons, may be issued a department approved less-lethal shotgun or pepper-ball rifle for field operations in a procedure approved by the Investigations Commander.

This raises the question of whether or not Det. Knudson had received such approval prior to his use of less lethal. I assume that the Department's philosophy in such circumstances as those of May 30/31, 2020 may address this through the concept of "functional control". This would mean that Det. Knudson was operating under the command authority of another Department supervisor or manager other than the Investigations Commander. However, I bring this to your attention so that it may either be adequately explained or addressed in the future. Additionally, the pepper ball launcher is erroneously referred to as a "rifle" in the above policy section.

- In reviewing the provided training materials, I could not find any mention of Department personnel being trained on the Less Lethal Policy.

I currently do not have any other documentation—such as lesson plans or more recent training reports—that might help clarify the above training issues. In total, it appears that on May 30th, 2020, Det. Knudson's less lethal training may have been out of date as required by that Policy.

#4 Was the use of force by Det. Knudson conducted within the guidelines of the currently accepted training practices regarding less lethal weapons?

Answer: No

Opinions: As discussed in the response to Question #3, there are a number of issues that apply.

- It appears that Sgt. Gay and/or Sgt. Purdy may have been involved in authorizing the use of the West Coast 12ga training rounds. From the currently available evidence however, the round fired by Det. Knudson may have been either at CTS duty round or more likely a West Coast training round. While due to the extreme circumstances the need for additional less lethal rounds was clearly evident and appeared to be reasonable at the time, in hindsight the decision to use the training rounds is at best, outside of current accepted training practices. Specifically, these rounds are not intended for use against individuals. I suspect that the less lethal training for La Mesa P. D. personnel—including sergeants—does not address this fact. It also appears possible that the SDSO shotgun may have been originally loaded and/or had rounds on it from that agency at the time the weapon was turned over to La Mesa P. D. personnel. The possibility of commingling different rounds from the two agencies is evident.
- Presumably, Det. Knudson was trained with approved La Mesa P. D. 12ga less lethal shotguns. For him and other officers to use another agency's less lethal shotgun without familiarization training is outside the scope of current less lethal practices. Det. Butcher's BWC video depicts how this transfer took place. However, it is unclear what level of supervisory approval—if any—was involved in La Mesa P. D. personnel taking possession of and using the SDSO Less Lethal shotgun. To reiterate, while the two weapons are similar in some respects, the difference in sighting systems is a serious concern.

- Det. Knudson has not received training in deploying the Less Lethal shotgun in combination with a gas mask and a ballistic helmet fitted with a face shield. During our interview, Det. Knudson used his gas mask and helmet to demonstrate his shooting stance from the incident. He pointed out that he was at the Dispatch balcony wall when this took place. Having seen his demonstration, I question whether or not he could establish and maintain a stable sight picture while wearing this equipment. It is my opinion that at times, Det. Knudson may only have been able to focus on the shotgun's front sight without viewing through the rear sight. This could possibly induce an upward trajectory that would lead to the bean bag round impacting higher than its intended point of aim.

This is especially relevant. Det. Knudson told me that the first time he used the mask and helmet in combination with a less lethal shotgun was on the night in question. It becomes of even more concern with his use of the SDSO less lethal shotgun. We know that the latter weapon had a different sighting system from that of a La Mesa P. D. weapon. I inspected his helmet, face shield and gas mask. The latter is a "full face" mask which allows for a larger visual field than other types of masks. Looking through both, I noted that they were relatively clean and clear. To my eyes, it appeared that there was some minor level of visual distortion when looking through the combination of these two mediums. To be fair, Det. Knudson stated during our interview that he does not wear glasses or contacts and that he did not experience any lack of clarity when looking through the gas mask and face shield.

- It appears that there is no specification of the "Departmentally approved" 12ga bean bag round in policy or training. Slide #3 in the Power Point presentation depicts a number of 12ga bean bag rounds. Within the current less lethal training standards, only two of the rounds depicted—the ALS bean bag and the CTS "Super Sock"—are acceptable for use against individuals. Also pictured are a number of the older version blue cloth West Coast Ammunition 12ga training bean bags and three variations of the 12ga square bean bag. The

latter has been considered obsolete for law enforcement use for 20 years if not longer.

I trust that the lecture accompanying this slide addressed the differences, especially as to which bean bags are currently approved by the Department for use against individuals. However, I have no way of confirming such an issue. Again, I could find no indication of what exactly is the departmentally approved 12ga less lethal bean bag round. This should be addressed through either Department policy or training protocols and the power point updated to reflect the proper bean bag rounds. To this point, Det. Knudson was asked about the Department approved 12ga bean bag round. His response was in general terms. It indicated to me that he believed both the CTS Super Sock and the West Coast duty round were the approved munitions.

In conclusion, I appreciate both you and the La Mesa Police Department trusting me to present my opinions on this matter. It is my sincere hope that I have fulfilled this task to your satisfaction. If there are issues that I am not aware of that may influence or alter this analysis, please contact me so that I may, as appropriate, incorporate them to enhance its accuracy. I am available to discuss this either over the phone or in person as you feel necessary.

Sincerely,

R. K. Miller

R. K. Miller, N.T.C.