

THE LOWDOWN

Sheriff Charles S. Blackwood

Perhaps you are familiar with the phrase, “the elephant in the room,” referring to an important topic people are thinking about but not discussing. As your Sheriff, I don’t want the use of force, particularly deadly force, to become such an elephant. It is a topic all communities should discuss.

The possibility of taking a life in the course of a deputy’s duties is a heavy responsibility. My deputies want to protect and serve, go home safely at the end of each shift, AND reach the end of their careers without harming another person. Unjust killing or abuse of power anywhere is abhorrent; and we recognize the added atrocity when such actions are taken by members of the law enforcement profession.

I believe it is my duty to talk about use of force at this time, even though it is a difficult, painful topic. In this *Lowdown*, I will define force and deadly force, address when each may be used, identify some myths, and discuss the applicable judicial standard.

In law enforcement, force means the application of physical techniques or tactics, chemical agents, or weapons to another person. It is not force when someone consents to being searched, escorted, handcuffed, or restrained. Law enforcement shall always use only the amount of force reasonably necessary to accomplish a legitimate law enforcement purpose. Our CAD (Computer Aided Dispatch) system documented 190,854 instances of law enforcement activity involving our deputies between January 1, 2017 and August 31, 2020. This includes answering calls for service, checking open doors, conducting traffic stops, helping stranded motorists, serving warrants, etc. Our deputies used force in 48 of these encounters (0.025%). We used deadly force once.

Deadly force is force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury. It may be used only when the officer or deputy believes no other action will neutralize the threat. Factors to consider before using deadly force include the immediacy and severity of the threat to the officer or others, the severity of the offense, the suspect’s attempts to resist or flee the officer, and the danger to the community. Law enforcement must also consider the conduct of the individual, the disparities in size, strength, injuries, and level of exhaustion between themselves and the subject, the effects of drugs or alcohol, and

the subject's mental state or capacity. In other words, the deputy or officer must consider the totality of the facts and circumstances.

There are several prevailing myths about deadly force. One is that a deputy can shoot to wound or disable a person. This is untrue. If deadly force is necessary, deputies are trained to aim for center body mass. To do otherwise reduces the likelihood the deputy will stop the threat, and increases the chance that others will be injured or killed.

Another myth is that if someone is shot in the back, the shooting was improper. This myth seems to stem from the "cowboy code" depicted in old westerns. It does not reflect the dynamic nature of a real-life, deadly force situation. For example, someone running away might fire a weapon over his or her shoulder, or he or she might be moving toward a third party with malicious intent.

A third myth concerns the belief a deputy should fire a "warning shot" as a last effort to bring the situation under control. A warning shot is not an authorized use of a duty weapon.

Once an officer employs deadly force, this decision is reviewed by the standard known as "objective reasonableness." This standard determines whether the deputy reacted reasonably in light of known facts and circumstances. Deadly force is not reviewed and judged with the benefit of hindsight. In other words, facts learned after the event (a weapon the subject displays turns out to be a toy) are not relevant when determining if the use of force was reasonable at the time.

Situations can change suddenly, as evidenced when Henderson County Deputy Ryan Hendrix died earlier this month. A suspect, who initially appeared to comply with an order to show his hands, suddenly retrieved a weapon and shot the deputy in the face.

We have a living, breathing contract with the community we serve. Our goal is to hire, train, and retain the best and the brightest deputies and to provide exceptional, ethical, and professional service. We pledge to offer each person respect and dignity and to hold ourselves accountable. We expect the community to hold us accountable as well. We ask to be judged by the work we do here in Orange County. If you have concerns, feedback, or questions about deadly force, or general questions about our services, please call me.