



# Sheriff's Office Training Bulletin

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## **A SUSPECT WHO BRANDISHED A SHOTGUN TO PREVENT CONTRACTORS FROM TAKING DOWN A SHARED FENCE WAS NOT LAWFULLY PROTECTING HIS PROPERTY.**

A man called a sheriff's department to get assistance in dealing with a neighbor dispute over a boundary fence between his property and his neighbors' property. The neighbors had hired a fencing company to take down the shared fence. When a deputy arrived, she advised the parties that the fence issue was civil and that they should take up the issue in civil court. The deputy told the man that he should avoid making a bad decision to use force so that the deputy would have to return.

Instead of listening to the deputy, the man went into his residence, went upstairs to his bedroom and began pointing a shotgun from his window toward the neighbors and two of the contractors. The neighbors documented the man's behavior on video and called 911. Soon, the deputy returned. The deputy entered the man's residence and placed him under arrest. The deputy searched the residence and located a video of the incident from the perspective of the man's residence. She also located the shotgun and its ammunition.

*See "Brandish" continued on page 2*

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- p. 1** A suspect who brandished a shotgun to prevent contractors from taking down a shared fence was not lawfully protecting his property.
- p. 4** A delusional letter making a threat to a prosecutor was insufficient to commit the offense of resisting an executive officer.

## San Mateo County Fire Season



## **FROM THE TRAINING MANAGER:**

I wanted to take a moment to thank everyone for their patience with the flurry of recent online training. I'd like to talk about the technical issues some people have had with the training.

Recent changes to law have mandated harassment training for all employees: 1 hour for all employees and 2 hours for supervisors. To accomplish this the county has contracted with a provider for online training. Some people have had problems with the training loading or not marking complete. Human Resources is currently working on this, and it should be resolved shortly.

All POST certified peace officers are required to have racial profiling training every 5 years. In the past, this was done as an in-person, 2.5 hours block of training which was hard to schedule due to the unusual length. POST has created a blended learning training block through which the requirement can be met by completing an online portion through the learning portal, and then speaking with an instructor.

*"Continued on page 5*

## **FROM THE RANGEMASTER**

### **How to Properly Choose a Light for your Duty Gun**

Choosing a weapon light can be a challenging task. While gun lights are not required by Sheriff's Office policy and any personal purchase will not be reimbursed, the Sheriff's Office understands that some deputies wish to carry them voluntarily and therefore we'd like to provide some recommendations.

The field of weapon lights from which to choose is broad. There are different manufacturers and brightness levels. A common question is, what is the difference between candela and lumens, and how do I pick the right light? I hope to shed some light on this issue. The two major manufacturers in the field are Surefire and Streamlight. Other companies such as Modlite and Cloud Defensive are starting to be able to compete with them.

First, there's a difference between lumens and candela. When you look at today's lights, you will see they are putting out quite a bit of brightness. Most lights are pushing 1,000 lumens or higher. This sounds very bright, but this is not always the case. Lumens is the total output of light from the bezel of the light. This means that, although 1,000 lumens may appear very bright, in reality it may not be that bright on the other end (down range).

*Continued on page 6*

*"Brandish" continued from page 1*

In the case of People v. Chen, the California Court of Appeal ruled that the evidence was sufficient to constitute the crime of brandishing.

In its written decision, the Court first looked at the entry and search of the man's residence and found that [the deputy]'s search was not justified under either the 'exigent circumstances' exception to the warrant requirement or the exception for a 'protective sweep.' The Court, however, did not overturn the conviction, because there was sufficient evidence without the evidence from the search.

The Court then looked at whether the evidence that convicted the man was sufficient in light of his defense that his actions were reasonable in protecting his property. The crime of brandishing a firearm is set forth in Penal Code section 417(a)(2), which states that "[e]very person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a firearm in any fight or quarrel" is guilty of a crime. Chen claimed that he was entitled to use reasonable force to protect his property from imminent harm.

In looking at the man's claim, the Court first stated, "The Restatement of Torts states that in order for use of deadly force to be justified as a defense, the intrusion must threaten death or serious bodily harm. And our Supreme Court long ago held that one is not justified in taking human life to prevent the commission of a mere trespass. The above authorities all speak in terms of using deadly force, but the principles they invoke apply to threats of deadly force as well."

The Court continued, "There are at least two reasons why such principles remain wise. For one, the preservation of human life is more important to society than the protection of property. For another, the use or threat of deadly force may cause the threatened person to defend himself by the use of a deadly weapon, which could lead in dangerous progression to an unacceptable conclusion."

## **SAN MATEO COUNTY SHERIFF'S OFFICE TRAINING BULLETIN**

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The Court further stated, “Importantly, this is not a situation involving a home invasion, nor even a defense against some other crime potentially involving death or serious bodily harm. Penal Code section 198.5 provides a statutory presumption of ‘reasonable fear’ when one uses deadly force against someone who has ‘unlawfully and forcibly entered the residence’ and is not a member of the family or household. Likewise, a defense against a person committing some other crime could warrant deadly force, depending upon the facts. As our Supreme Court concluded . . . , even in defending against someone committing a felony, where the character of the crime, and the manner of its perpetration do not reasonably create a fear of great bodily harm, there is no cause of exaction of a human life or for the use of deadly force. Using or threatening deadly force is presumptively acceptable in a home invasion situation covered by section 198.5 and may be acceptable when another serious crime is being committed, depending upon the facts.”

The Court concluded, “But it is never acceptable to use or threaten deadly force solely to defend property. Here, nothing in the record indicates that the neighbors forcibly entered [the man]’s home or that they committed any felonies, much less any that threatened death or serious bodily harm. Instead, the neighbors simply sought to remove and replace a shared fence. Accordingly, whether or not the neighbors complied with homeowners association rules or the Civil Code, [the man] was not legally justified in brandishing a deadly firearm.” ☆

**A DELUSIONAL LETTER MAKING A THREAT TO A PROSECUTOR WAS INSUFFICIENT TO COMMIT THE OFFENSE OF RESISTING AN EXECUTIVE OFFICER.**

A deputy district attorney prosecuted a man for parole violations, including an incident during which the man threatened to blow up a

parole office building. The man was found in violation of the terms of his parole and was sentenced to serve 180 days in county jail for the violation.

A few months later, the prosecutor received a handwritten letter by the man. In that letter, the man stated that he was a member of Russian military intelligence and that the prosecutor had been “sentenced to death in Moscow for the crime of kidnapping a soldier of the armed forces of Russia.” The letter further stated, “I am scheduled to be released from my current incarceration, [giving the date of his scheduled release]. I warn you if charges are not dropped, all perjured restraining orders lifted, my parole cancelled, I will charge, but effectively sentence, the entire Solano County DA’s office with kidnapping punishable by death by Russian military firing squad. Let me be crystal clear—I have no training in riflery or authorization to carry out an execution: what I am saying is that if I have to report to parole on [a specified date], before [another specified date] your entire office will be arrested by Russian military police, tried in a rubber stamp trial for kidnapping, and sentenced to death by firing squad. . . . My only part in the execution, as psyops officer, will be to livestream it on Facebook.” The letter also stated, “It is clear to any rational person that I pose no threat to anybody,” and “Once again, I am not authorized to, nor will I, take any actions that violate California laws—Am threatening formal, official foreign military force & justice.”

In the case of People v. Smolkin, the California Court of Appeal overturned a conviction of the man for a violation of Penal Code section 69 by resisting an executive officer and ruled that the defendant’s conduct was protected by the First Amendment’s protection of the freedom of speech.

California Penal Code section 69 makes it a crime to attempt, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or by knowingly resisting, by the use of force or violence, the officer, in the performance of his or her duty.

## MISSION STATEMENT

The San Mateo County Sheriff's Office is dedicated to protecting lives and property and is committed to providing the highest level of professional law enforcement and correctional services. We pledge to promote public trust through fair and impartial policing and will treat all persons with dignity, compassion and respect.

### COMMITMENT

We are committed to protecting life and property and preserving the public peace by acting professionally, with integrity, and without prejudice, even in the most challenging circumstances, when no one is watching, and on and off duty. We hold others accountable to the same standards and challenge any inappropriate behavior.

### INTEGRITY

We are committed to ethics, equity and excellence. We understand that making a difference in the quality of life is an opportunity that policing and correctional services provides. We provide excellent service by respecting and upholding the rights and freedoms of all people in all our interactions, free from bias or stereotype, seeking to understand and help others by making a difference.

### COMPASSION

We understand that sometimes we interact with the community during their most trying times. We are committed to treating all people with compassion, empathy, and respect; going the extra mile to ensure others feel safe, supported, included, engaged and valued; standing up for those who cannot stand up for themselves; and valuing others' life experiences.

### INNOVATION

We promote an environment that encourages continuous improvement and innovation. We strive to be leaders in modern policing, acting on input and feedback from our communities and colleagues; constantly implementing best-practices; and exploring alternative solutions to current issues.

*"Executive" continued from page 3*

In its written decision, the Court first stated, "The First Amendment states that 'Congress shall make no law . . . abridging the freedom of speech.' This proscription, as incorporated through the Fourteenth Amendment's due process clause, likewise binds the states. The provision is not absolute, however. Not within the First Amendment's protection are certain well-defined and narrowly limited classes of speech—those of such slight social value as a step to truth that any benefit may be derived from them is clearly outweighed by the social interest in order and morality. Falling into that category are what the United States Supreme Court has described as 'true threats.' Accordingly, a conviction under section 69 based on threatening speech is unconstitutional if the speech was not a 'true threat.'"

The Court continued, "True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

The Court further stated, "We make an

independent examination of the record in determining whether the speech at issue is an unprotected true threat. Nevertheless, because the trier of fact is in a superior position to observe the demeanor of witnesses, credibility determinations are not subject to independent review, nor are findings of fact that are not relevant to the First Amendment issue. In the present case, the material facts are not in dispute. Thus, we must make an independent legal determination whether a reasonable listener would understand the . . . letter to constitute a serious expression of an intent to commit an act of unlawful violence in light of the context and surrounding circumstances."

The Court then stated, "We conclude that, as a matter of law, a reasonable listener would not have understood [the man]'s . . . letter to be a true threat. This is due to the combination of three factors: first, Appellant's threats were delusional; second, Appellant threatened violence by third parties who were not (except in his delusion) his associates; and third, Appellant repeatedly assured he was not threatening to personally commit violence."

The Court looked at each of the three

factors and began, “First, Appellant’s threat was . . . patently delusional. The letter stated that Appellant’s confinement for parole violations constituted kidnapping of a Russian military operative and threatened that the entire district attorney’s office would be sentenced to death by firing squad. The threat was utterly nonsensical, and respondent has never argued to the contrary. As the prosecutor admitted in his closing statement to the jury at trial, ‘I certainly don’t expect . . . anybody to really believe that [the man] is an agent or ever was an agent of the Russian military, that he had any real power . . . to bring jets or . . . to sentence people to death.’”

The Court continued, “Although we do not conclude a delusional threat can never constitute a true threat, it is notable that respondent fails to identify any case approving the criminal prosecution of a person for a patently delusional threat. Instead, the cases cited by the parties (and other related California cases) involve implied threats, hyperbolic threats, improbable threats, vague threats, or metaphorical threats—not delusional threats. In any event, the delusional nature of the letter is not the only basis for concluding the threats made therein were not true threats.”

The Court continued, “The second important factor is the circumstance that Appellant threatened violence by third parties who were not—except in his delusion—his associates. Thus, although Appellant threatened [the prosecutor] with death, he said it would be accomplished by Russian military authorities and emphasized he was ‘threatening formal, official military force & justice.’”

The Court then stated, “The third important factor is that Appellant repeatedly assured he was not threatening to personally commit violence. He wrote in the . . . letter, ‘Let me be crystal clear—I have no training in riflery or authorization to carry out an execution . . . My only part in the execution, as psyops officer, will be to livestream it on Facebook.’ He emphasized at the end of the letter, ‘Once again, I am not authorized to, nor will I, take any actions that violate California laws . . .’ And he wrote in a margin, ‘It is clear to any rational

person that I pose no threat to anybody.’” The Court noted that the disclaimers would have signaled to a reasonable listener that Appellant was not making a serious threat of violence. The Court added, “This is particularly true in light of the delusional nature of the threatened violence and the lack of any threatened conduct by actual associates of Appellant. Those circumstances left Appellant as the only possible violent actor, and the letter repeatedly disclaimed any such intent.”

The Court dismissed the State’s argument that, even though the threat was delusional, the man was going to be released from custody shortly and could have other means to inflict harm. The Court stated, “. . . [W]e are not confronted in the present case with a situation where a defendant has a record of committing acts of violence. It may have been reasonable for [the prosecutor] to be concerned about the possibility he might be targeted by Appellant for harassment, but respondent has not pointed to any evidence Appellant had committed violent acts in the past. Given the delusional nature of the threat itself and the absence of any link between Appellant and the commission of violent acts, a reasonable listener would not view the letter as a serious expression of an intent to commit an act of unlawful violence. Based on our independent examination of the record, we conclude criminally sanctioning Appellant on the basis of the . . . letter was unconstitutional as a matter of law.” ☆

*“Training Manager Notes” continued from page 1*

We have been using this to help meet the mandate. However, some people have had problems accessing the training using an outdated browser.

Soon, you will be assigned the annual online Vehicle Pursuit training. This will be an LMS training, which will guide you through the process of reviewing the policy, completing the POST online training, and completing a written attestation.

There are going to be times when there are glitches or problems with online training. If you have issues with online training, please contact the Training Unit or HR before repeating it. While these trainings are tested, there are almost always issues that present themselves when it’s actually assigned to people. Letting us know helps us fix the problem and possibly avoid the same errors going forward.

*"Range Master Notes" continued from page 2*

This is where candela comes in. Candela is the measurement of light at the end of the beam, meaning down range. This means you have more focused and brighter light on the specific area or the suspect you are trying to see.

Weapon lights are also force multipliers. They can temporarily blind a suspect which could cause them to comply. Weapon lights also give you the advantage for threat identification in dark or poorly lit areas.

When choosing a weapon light, lumens is the buzzword because it sounds like the light is very bright. This is correct but not always accurate downrange. I recommend choosing a weapon light that has a high lumen output but also has a high candela output. While I primarily use Streamlight, there are other manufacturers such as Surefire. Carrying a weapon light is a personal choice, and I would recommend testing the light before buying it.

Each weapon light has its own unique operating feature that some may like over other features. Modlite and Cloud Defensive are also reputable manufacturers; however, they currently only make long gun lights. Modlite and Cloud Defensive have both high lumen and candela output. When choosing a light, shop around and try out different lights. There are plenty of people in the organization that carry a variety of lights. Ask them if you can try out and test their light. Do keep in mind that any purchase based on someone's recommendation may not always be the best bet; the most important thing is what works for the individual. There may be certain operating features that prove more difficult to operate than others.

Finally, while the purchase and maintenance of lighting is the sole responsibility of the Deputy, remember that any new lighting must be approved by the Rangemaster prior to being used on duty per Lexipol 306.3.4. Please feel free to call me or get in touch with range staff to assist you.

## CODE OF ETHICS

**AS A LAW ENFORCEMENT OFFICER**, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

**I WILL** keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

**I WILL** never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

**I RECOGNIZE** the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.