



OFFICE OF THE DISTRICT ATTORNEY  
**C O U N T Y O F K E R N**

CIVIC CENTER JUSTICE BUILDING  
1215 TRUXTUN AVENUE  
BAKERSFIELD, CALIFORNIA 93301  
(661) 868-2340, FAX: (661) 868-2700

JAMES D. SIMSON  
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER  
DISTRICT ATTORNEY

ANDREA S. KOHLER  
ASSISTANT DISTRICT ATTORNEY

May 29, 2019

**MEDIA ADVISORY**

**CONTACT:**  
**Cynthia J. Zimmer**  
**(661) 868-2716**

**FOR IMMEDIATE RELEASE**

**Approved by: CJZ**  
**Press Release # 27**

**OFFICER-INVOLVED SHOOTING REVIEW**

**Involved Parties:**

California Highway Patrol Officer Dan Fallas  
Felipe Perez

**Incident Location:**

CA Hwy 99/North of 7<sup>th</sup> Standard

**Incident Date:**

August 24, 2018

**Investigated by:**

Kern County Sheriff's Department

**Factual Summary**

On August 24, 2018, Felipe Perez stabbed himself twice in the chest. Perez then drove his vehicle into a wooden utility pole at 80mph without his seatbelt on. The wounds from the stabbing were superficial. The airbag protected him from significant harm in the crash. Perez then left his vehicle, climbed over a fence, and began walking along the 99 Freeway.

CHP Officer Dan Fallas arrived. He ordered Perez for four minutes to stop and allow him to help him. Perez then walked across the freeway. The freeway was busy with traffic and Perez was almost struck by an RV. Officer Fallas followed him in his patrol vehicle to the center median. Officer Fallas then saw that Perez had a knife in his hand. He exited his patrol car and ordered Perez at gunpoint to stop and drop the knife. Perez did not comply.

Instead, Perez approached Officer Fallas in a fighting stance with the knife still in his

hand. In fear of his life, Officer Fallas fired his service weapon at Perez several times. During the shooting Officer Fallas retreated away from Perez as he shot. However, Perez continued to approach Officer Fallas even after being shot.

Perez then attempted to carjack several occupied vehicles on the freeway. Officer Fallas approached again attempting to stop Perez, but Perez rushed towards him. Officer Fallas fired his service weapon again. This time Perez was killed.

Numerous witnesses to the incident informed deputies that Officer Fallas had no choice but to shoot. One witness said it looked like “suicide by cop.” Further investigation revealed that Perez had suffered mental health problems for years, had previously attempted suicide, and was experiencing another serious bout of depression at the time of this incident.

### **Reasonable Use of Force—Firearm versus a Knife**

A knife is legally considered to be a deadly weapon. “A knife is both a ‘deadly weapon’ (Penal Code section 245) and a ‘dangerous weapon’ (18 U.S.C. section 113(c)).”<sup>1</sup> With respect to knives, Dennis Tueller published a well-known study regarding the “21-foot rule.” The rule describes the amount of distance (twenty-one feet) that a person with a knife can cover and then attack based upon the average amount of time it takes for an officer to perceive the threat and react to it with a holstered firearm.<sup>2</sup> A suspect armed with a knife within twenty-one feet is considered a lethal threat to an officer with a firearm.

Officer Fallas explained in his interview that he has investigated cases where people have suffered great bodily injury and death as a result of suspects armed with knives. Furthermore, he has previously been knocked unconscious when dealing with a suspect that was able to close the gap and assault him faster than he had time to react to.

Although Officer Fallas saw Perez with a knife at the center median, he did not begin shooting right away. He drew his firearm and ordered Perez to stop and show his hands. Drawing a firearm is considered a use of force.<sup>3</sup> Despite this show of force coupled with continued verbal commands, Perez did not comply. Instead he turned towards Officer Fallas and began moving towards the officer in a fighting stance while holding the knife.

The courts give great deference to the police when choosing what weapon to use responding to a threat. “Detached reflection cannot be demanded in the presence of an uplifted knife.” *Brown v. United States*, 256 U.S. 335, 343 (1921) (Holmes, J.).

### **CONCLUSION**

The Kern County District Attorney’s Office conducts reviews of Officer-Involved Shootings for criminal liability. Based on a review of the evidence Officer Fallas acted in self-defense, and defense of others on the freeway. There is no criminal liability as the shootings by Officer Fallas are legally justified.

---

<sup>1</sup> *Hockenberry v. U.S.*, 422 F.2d 171 (9<sup>th</sup> Cir. 1970).

<sup>2</sup> Tueller, Dennis (March 1983) “How Close is Too Close?” S.W.A.T. Magazine; a link to the article by Tueller can be found through The Police Policy Studies Council, at [www.theppsc.org/Staff\\_Views/Tueller/How.Close.htm](http://www.theppsc.org/Staff_Views/Tueller/How.Close.htm)

<sup>3</sup> (*Tekle v. U.S.*, 511 F.3d 839, 845 (9<sup>th</sup> Cir. 2006); *Robinson v. Solano County*, 278 F.3d 1007, 1014-15 (9<sup>th</sup> Cir. 2002); *Baker v. Monroe Township*, 50 F.3d 1186, 1193 (3d Cir. 1995) “...use of guns and handcuffs must be justified by the circumstances.”)