



Office of the District Attorney Stanislaus County

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PRESS RELEASE

For Immediate Release

For More Information Contact:

Date: January 17, 2017

John Goold, Public Information Liaison

Re: Shooting by Officers Found to be Justified Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence gathered during the investigation of an officer involved shooting death that occurred on January 5, 2016, the shooting has been determined to be justified. Officers Justin Canatsy and Jesus Salinas had information that Albert Thompson, a wanted, armed parolee at large, could be located at an apartment complex in Ceres. When they located him, he initially fled and then pulled a small, metallic object from his waistband and pointed it towards one of the officers as if it were a firearm. The officers fired at Thompson as they moved for cover. Thompson did not survive his wounds. The object was later determined to be a butane torch.

A copy of the letter provided to the Ceres Police Department is attached to this press release.

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January 17, 2017

Chief Brent Smith
Ceres Police Department
2727 Third Street
Ceres, CA 95307

Re: Shooting of Albert THOMPSON

Dear Chief Smith:

This office has completed its review of the shooting that occurred on January 5, 2016 of Albert Thompson (DOB 6/8/87) at 2601 Don Pedro Road in the City of Ceres. Based on this review, I must conclude that Officer Justin Canatsy and Officer Jesus Salinas acted in self-defense.

SUMMARY

On January 5, 2016, at approximately 10:00 p.m. (2200 hours) Officers Canatsy and Salinas were on routine patrol checking the area of 2601 Don Pedro Road, an apartment complex. The area is a high crime area and they had information that a wanted, armed parolee at-large might be there. The officers, in full police uniforms, parked and began walking through the complex's parking lot. As they walked, the officers split up in an attempt to locate the parolee. Officer Canatsy saw someone in the darkness (later identified as Thompson) and called for Officer Salinas to come to his location.

Officer Canatsy walked towards Thompson in the dark parking lot while Officer Salinas followed behind. As the officers approached, Thompson started to walk around a vehicle and away from them. Officer Salinas identified himself as "Ceres Police" and Thompson fled. The officers broadcast that they had "one running" and pursued. As Thompson ran around another vehicle the two officers separated again, forming a triangle with Thompson as the apex.

Thompson became blocked in by another vehicle and started to reach for something in his waistband. Thompson moved towards the bed/rear of a vehicle as he attempted to pull something from his waistband, while was looking at the officers. He said nothing. Both officers began yelling at Thompson to “show your hands” but he refused. Both officers pulled their guns and continued to yell at Thompson. At some point Thompson pulled a small dark metallic object out of his waistband area and pointed it at Officer Salinas. Canatsy would later say the object was being held like “someone shooting a firearm or holding a firearm.”

Both officers fired at Thompson as they moved for cover believing that Thompson was shooting at them. Thompson started to run away but continued to point the item at the officers. Officer Salinas said he thought he wasn't going home and was going to be shot. Thompson made it further into the parking lot where he collapsed. He did not survive his wounds.

Pursuant to the county-wide officer involved shooting protocol, an investigation was immediately commenced. The scene was secured, documented and all those present were interviewed. A search of Thompson turned up methamphetamine and a “meth pipe” and he was later found to have methamphetamine in his system. The cause of death was determined to be multiple gunshot wounds. The item that Thompson pointed at the officers was a butane torch.

LAW

The U.S. Supreme Court has said the analysis that should be applied to an officer's use of force is the same as is applied to a review of a Fourth Amendment issue. One Court of Appeals has distilled this area of law into the following passage:

“The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [T]he question is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 343 (Martinez), quoting Graham, supra, 490 U.S. at pp. 396-397.) In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required. (Edson v. City of Anaheim (1998) 63 Cal.App.4th 1269, 1273 (Edson).)

“We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (Martinez, supra, 47 Cal.App.4th at p. 343.) Placing the burden of proof on the plaintiff to establish that an officer's use of force was unreasonable “gives the police appropriate maneuvering room in which to make such judgments free from the need to justify every action in a court of law.” (Edson, supra, 63 Cal.App.4th at pp. 1273-1274.)

Where potential danger, emergency conditions, or other exigent circumstances exist, “[t]he Supreme Court's definition of reasonableness is ... “comparatively generous to the police...”” (Munoz, supra, 120 Cal.App.4th at p. 1103.) ““In effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases...”” (Ibid.) A police officer's use of deadly force is reasonable if ““the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”” (Ibid.) ““Thus, “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”” (Ibid.)”

Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527-528

Police officers are vested with statutory protections in California to allow them to perform their duties; one such law is Penal Code §835a, and it states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

The rights conferred under §835a include the right to make a detention, which is an act that is less than an arrest. When reviewing an officer's use of force, we not only evaluate the above mentioned protections afforded to police officers, we also

review the law of self-defense, which is a right available to all individuals, police officer or not. Additionally, if the officer is acting within the scope of his/her duties, there is a special right of self-defense. Both laws are as follows:

“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-- ¶ 1. In obedience to any judgment of a competent Court; or, ¶ 2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or, ¶3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.”

Cal. Penal Code § 196

“Homicide is also justifiable when committed by any person in any of the following cases: ¶ 1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or, ¶ 2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or, ¶3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or, ¶ 4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.”

Cal. Penal Code § 197

Everyone in California has the right to self-defense, and police officers have additional rights due to the very nature of the job. Self-defense is a complete defense to an action that might otherwise be unlawful:

“Self-defense, when based on a reasonable belief that killing is necessary to avert an imminent threat of death or great bodily injury, is a complete justification, and such a killing is not a crime. ***‘A person who actually believes in the need for self-defense necessarily believes he is acting lawfully.’”

People v. Elmore, (2014) 59 Cal. 4th 121, 133–34

The law also establishes parameters for a police officer to use force in self-defense:

“It may, in conclusion, be added that a peace officer, when attempting to arrest a person charged with a public crime, who has committed a public offense in the presence of the officer, or who the officer has probable cause for believing has committed a crime, may use all necessary force to effect the arrest, or may take the life of the purported offender if it becomes necessary to save or preserve his own, but there must be a real or apparent necessity to justify the resort by the officer to such an extreme measure for his own safety or protection.”

People v. Newsome, 51 Cal. App. 42, 49, 195 P. 938, 941 (Cal. Ct. App. 1921)

In the case of Foster v. City of Fresno, (2005) 392 F. Supp. 2d 1140 the court was faced with the situation where police officers shot and killed an unarmed man, but objectively believed the man had a gun. That court said: “Officer Cornelison reasonably believed Foster was armed and that all three officers saw Foster move his arm down. It is these undisputed facts that provided Officer Cornelison with probable cause to use deadly force.” *Id.*, at page 1157-1158.

ANALYSIS

The undisputed facts in this case are that Officer Canatsy and Salinas were police officers and at a location they were legally entitled to be. They were in uniform and clearly identifiable as police officers. Therefore, the protections set out above are applicable.

When Thompson fled, the officers had the right (if not the duty) to pursue him to determine who he was; in the darkness it could not be determined if he was the wanted parolee. The officers identified themselves as police officers. When Thompson turned and reached towards his waistband the officers ordered him to

show his hands. The officers were in uniform, and clearly made their presence known, so any failure to comply on Thompson's part was a volitional act.

At this point the officers drew their weapons. When Thompson reached to his waistband and pulled out a small dark metal object he left the officers with no other option. Both officers expressed that they were in fear for their safety and the safety of the other officer establishing the subjective component of self-defense. The only remaining question to be answered is, was it reasonable for the officers to feel in danger – the objective component of self-defense.

The item that Thompson pointed at the officers was a butane torch. It is metallic and cylindrical in shape. Two photos are included here to show the reasonableness of the officers' belief that Thompson had a weapon.



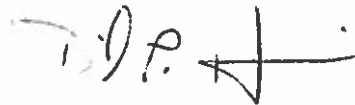
The movements that Thompson made, his behavior and finally pointing the object at the officers would lead any reasonable officer to believe they were confronting an armed suspect. That was the holding of the Foster case set out above. The Foster case was a civil matter, with a lower burden of proof, yet that court found the officer was justified in shooting an unarmed suspect because he reached into his waistband. There is no reason not to follow the law as set out in the Foster case.

CONCLUSION

The evidence leads me to the conclusion that Officer Canatsy and Officer Salinas both acted in self-defense and/or the defense of others. The shooting by these officers was both objectively reasonable and justified under the facts known to them (individually and collectively) at the time of the shooting. It is, therefore, this office's determination that the shooting of Albert Thompson was justified under the provisions of California law and this matter is now closed.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Officer Justin Canatsy
Officer Jesus Salinas