



Office of the District Attorney Stanislaus County

Birgit Fladager
District Attorney

Assistant District Attorney
David P. Harris

Chief Deputies
Annette Rees
Marlisa Ferreira
Stephen R. Robinson
Jeffrey M. Laugero
Jeff Mangar

Bureau of Investigation
Chief Terry L. Seese

PRESS RELEASE

For Immediate Release

Date: October 16, 2019
Re: Shooting by Officer Found to be Justified

For More Information Contact:

John Goold, Public Information Liaison
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 the officer-involved shooting that occurred on May 13, 2017, the shooting has been determined to be justified.

A copy of the letter provided to the Stanislaus County Sheriff's Department is attached to this press release.

Office: 832 12th Street, Suite 300 Modesto, CA 95354 Mailing: PO BOX 442 Modesto, CA 95353
Telephone: (209) 525-5550 Fax: (209) 558-4027 www.stanislaus-da.org



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October 14, 2019

Sheriff Jeff Dirkse
Stanislaus County Sheriff's Office
250 E. Hackett Rd.
Modesto, CA 95358

Re: Shooting of Story Ann Miller

Dear Sheriff Dirkse:

This office has completed our review of the shooting of Story Ann Miller (D.O.B. 5/22/1982) which occurred on May 13, 2017 in the City of Modesto in the area of 225 Bragg Road (Sheriff's jurisdiction). It is reported that Deputy Brent Salyer shot Miller in self-defense and defense of another. Ms. Miller survived her injuries, was charged with criminal assault on the responding deputies, and has recently pled guilty¹. It is our determination that the deputy was justified in his actions (as will be explained below) and we now view this matter as closed.

FACTS

On 5-13-17 at approximately 2240 hours, deputies were dispatched to 225 Bragg Road, Modesto, California, County of Stanislaus, regarding a disturbance involving a knife (radio traffic later updated this to an attempted stabbing and biting). Deputies Darwin Summerton, Justin Wall, Brent Salyer and Earl Gaarde arrived within moments of each other. The deputies located a victim bleeding from what appeared to be knife wounds and a bite.

The victim had been co-habiting with Story Ann Miller and told deputies that Miller had been acting "weird" for three days and taking her mental health medicine improperly. The victim stated he found Miller cutting "live" wires with a fixed blade knife and it was causing sparks near their trailer. He was afraid she would start a fire and told her to stop; Miller responded by stabbing the victim in the shoulder. The victim struggled to gain control of Miller and keep the knife away from him; Miller bit him on the arm tearing out a piece of flesh with her teeth. The victim was cut once more, but was able to flee to a neighbor's trailer where 911 was called.

¹ Pursuant to the county-wide use of force policy, if criminal charges are filed by the District Attorney's Office against someone who caused the use of force to occur, the separate legal review of the use of force by a peace officer will not commence until the criminal case has been completed.

Several uniformed deputies approached the trailer and observed Miller standing in the doorway. Deputies identified themselves as “Sheriff’s Department” and gave commands to Miller to drop the knife and Miller initially did. Deputy Summerton later stated that Miller made what he described as a “demonic growl” and “she looked crazy.” Miller then gave them a look and gave a heavy growl as she grabbed the knife. Miller advanced on the deputies; Dep. Summerton and Dep. Wall (the closest to Miller) retreated. Miller was within about 15 feet of the retreating deputies when Air 101 broadcast that Miller was “charging the deputies”. Dep. Salyer, a cover officer, fired at Miller as she approached the deputies holding the knife, blade up, in front of her. Dep. Salyer later stated as he was backing up, he was watching the gate and she (Miller) flung the gate open. She ran out of the gate, hunched over, still having the “crazy rabid dog” look on her face and snarling. She began pursuing Dep. Wall and Dep. Summerton and he was convinced she was going to kill them if she was able to catch them.

Civilian witnesses confirmed that Miller was given commands to drop the knife before the shooting. Even after being shot Miller still held onto the knife. It had to be forcibly removed from her hand. She was transported to the hospital and survived her injuries.

Miller was charged with various crimes and pled guilty to a violation of Penal Code §245(c) on July 9, 2019. This crime is commonly referred to as assault with a deadly weapon on a peace officer.

LAW

Any application of deadly force is unlawful unless it is either justified or excused. The use of force by a peace officer is governed by the Fourth Amendment. As the U.S. Supreme Court has said:

“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.... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ [citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.”

Graham v. Connor, (1989) 490 U.S. 386, at p. 396-397.

Peace officers have rights by their need to enforce the laws that differ from the ordinary citizen. Some of these rights are codified in Penal Code §835a which during the time of this incident stated:

“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.”

CONCLUSION

Based on the law, Deputy Salyer was performing his job as a police officer which allowed him to be where he was and contact the defendant. Dep. Salyer was informed of the nature of the crime and the fact Miller was armed with a knife. When the deputies arrived, they found a bloodied victim who described Miller’s behavior and action – including stabbing and biting him. When confronted and told to drop the knife Miller “growled” at the deputies and charged after them. The use of force by Dep. Salyer was measured and in direct response to the threat he perceived. In other words - it was reasonable and justified. In other words, the deputy’s use of force was not excessive. Under these circumstances, the shooting of Story Ann Miller by Dep. Brent Salyer is determined to be justified. Further, the fact that Miller admitted her guilt in attempting to assault the deputies with a knife establishes conclusively that Dep. Salyer was justified as well.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Dep. Brent Salyer