



**Office of the District Attorney  
Stanislaus County**

**Birgit Fladager  
District Attorney**

**Assistant District Attorney  
Dave Harris**

**Chief Deputies  
Doug Raynaud  
Annette Rees  
Marlisa Ferreira**

**Chief Investigator  
Kevin Bertalotto**

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**PRESS RELEASE**

**For Immediate Release**

Date: April 29, 2016  
Re: Officer Involved Shooting Review

**For More Information Contact:**

Kristy Ibarra, Executive Assistant  
Phone: (209) 525-5519

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, following an investigation and thorough review of all available evidence, the shooting death of Jason Moland on March 3, 2015 in a Modesto park by off duty, former Ceres Police Officer Thomas Miller has been determined to be legally justified.

A copy of the letter provided to the Modesto Police Department with a review of the facts and an analysis of the applicable law is attached to this press release.

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April 22, 2016

Chief Galen Carroll  
Modesto Police Department  
600 10th Street  
Modesto, CA 95354

Re: Death of Jason Moland

Dear Chief Carroll:

On March 3, 2015, Jason MOLAND (DOB 12/18/85) was shot near 3700 Beyer Park Drive (in Beyer Park). Your department has submitted the case to the District Attorney's Office for review (under MPD case #15-028957). Based upon my review of the submitted reports, audio and video evidence and witness statements, I must conclude that the use of force by Thomas MILLER was legally justified. To explain this finding, I begin with a brief summary of the known facts:

**FACTS**

On March 3, 2015, at approximately 2221 hours, a shooting occurred near 3700 Beyer Park Drive (in Beyer Park). The actual shooting location was in the playground area located in the south end of the park, just north of the skateboard park area. The playground area consists of children's playground equipment in a sand area. There is a park bench located on the sidewalk area on the southern boundary of the playground area. The lighting conditions at the time of the shooting were that it was nighttime hours, dark, no park lights in the immediate area of the playground area, and very little was visible without the aid of flashlights and police vehicles' headlamps or spotlights.

The initial 911 call and the public safety statement provided to the first responding Modesto Police officers indicated that Officer Thomas MILLER of the Ceres Police Department was off-duty and in the park with [REDACTED] (DOB [REDACTED]) when Miller was approached by an unknown male wearing a

hooded sweatshirt. The male produced a pistol and, cursing, pointed it at Miller. Off-duty Officer Miller discharged his off-duty weapon shooting the unknown male. The unknown male was later determined to be Jason MOLAND, the husband of [REDACTED]. [Hereafter, the Molands will be referred to by his/her first name to avoid confusion.] Lifesaving efforts were attempted, but Jason did not survive.

As officers arrived on the scene, documented by body-worn cameras (BWC), Miller was performing CPR on Jason, with [REDACTED] crying nearby. A black handgun was lying on the ground within the crime scene. This gun would later be determined to be a pellet gun, indistinguishable from a real gun without close observation (it did not have any visible orange portion). The gun, a Gamo .177 Caliber Pellet handgun, was about 8 feet from where Jason was lying on the ground when police officers approached.

Based on countywide protocols, the scene was secured, the District Attorney's Office notified and the witnesses were interviewed. Preliminary statements were obtained from Miller and [REDACTED]. Both Miller and [REDACTED] admitted that they met at Beyer Park the night of the shooting, drove to a Starbucks coffee shop, and then returned to Beyer Park. [Physical evidence on scene confirmed this.] Both admitted they were married to other parties.

In her statement, [REDACTED] said she had told Jason she was going out with a friend. [REDACTED] said she was sitting on the park bench with Miller and, after a short period of time, she saw a subject walking in a northerly direction from the skateboard park area. He was wearing a sweatshirt with a hoodie pulled up over his head. She said Miller also saw the subject walking towards their location. [REDACTED] said that, as the subject walked up, she recognized the subject as being her husband, Jason. At about the time she was able to recognize Jason, he yelled, "What's up, mother fucker" and raised a handgun in his right hand pointed at Miller. [REDACTED] said she recognized the handgun as a BB gun that Jason kept at their residence for protection. Before she could say anything, Miller pulled a gun and fired twice at Jason. [REDACTED] said she did not know how Jason ended up at the park. She said Jason was supposed to be home with their kids and the kids were supposed to be at home in bed.

A search of the area nearby established that Jason had driven to the park, but did not bring the kids with him. They were eventually found at the Moland home safe in bed. [A security check was conducted by officers since the children were not located in Jason's car.]

Miller told officers he had met [REDACTED] at the park that night and that they were sitting on the park bench talking. Miller noticed a subject walking near them. The subject began walking toward them and he saw the subject had something in his left hand. Miller said he removed his own off-duty weapon and put it behind him and was holding the gun as the subject was approaching him. Miller saw the subject still had something in his hand. Miller said the subject appeared to be holding a gun and said "What's up, mother fucker." The suspect began to raise the hand which held the gun and Officer Miller shot him. Two rounds were fired by Miller with one round hitting Jason. Both expended bullets and the two expended cartridge cases were recovered.

As part of the police investigation photographs were taken of the gun Miller said had been in Jason's hand. The Modesto Bee obtained at least one of these photographs (of the gun Jason had) and published the picture in the newspaper. A friend of Jason's saw the photograph of the gun in the Modesto Bee newspaper. This friend stated he knew that this BB gun belonged to Jason. Jason always kept this BB gun in his garage. The witness explained that he could not understand why Jason would want to confront anyone with a BB gun.

Detectives tried to establish why and how Jason had shown up in the park that night; had he followed [REDACTED] or had he been lured to that location. Multiple searches were conducted on all parties' electronic devices. The electronic tracks left behind showed that on 3/29/15 at 2200 hours Jason went onto the Google Play store and viewed the iPhone locator application. He then installed it onto his phone at 2208 hours. This application would allow him to locate where an iPhone was physically located if he had the number and account information. Jason had [REDACTED] information.

On 3/29/15 at 2216 hours, Jason accessed the iPhone location app he had just installed onto his phone. It could not be determined if Jason was able to sync to [REDACTED] phone to determine her phone's location, but he was at her physical location within five minutes of using the application.

There was no digital evidence on Miller's or [REDACTED] phones or computers showing a plan to lure Jason to the park. There was also no information on Jason's phone that would lead someone to believe he had told anyone he (Jason) suspected [REDACTED] of having an affair. There were other circumstances that would indicate he was concerned and his concern would explain the installation of the phone application. However, there was no evidence to suggest Jason knew Tommy Miller

was with [REDACTED] at Beyer Park the night Jason was killed (or that she was with any particular person).

## LAW

Any application of deadly force is unlawful unless it is either justified or excused. A legal justification for using deadly force is the law of self-defense. In California, juries are instructed with CALCRIM 505 which states:

*The defendant is not guilty of murder if he was justified in killing someone in self-defense or defense of another. The defendant acted in lawful in self-defense or defense of another) if:*

*1. The defendant reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury or was in imminent danger of being robbed;*

*2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger;*

*AND*

*3. The defendant used no more force than was reasonably necessary to defend against that danger.*

*Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to himself or someone else. Defendant's belief must have been reasonable and he must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the killing was not justified. When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.*

The law of self-defense, available to everyone, is codified in Penal Code §197, which says:

*“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."*

In the case of Foster v. City of Fresno, (2005) 392 F. Supp. 2d 1140 the court was faced with a 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.

The term "probable cause" in the Foster case is another way of saying the conduct was reasonable. Reasonableness is the standard required for self-defense as set forth above. If Miller was objectively and subjectively reasonable in his actions he is entitled to the protections of the rules of self-defense.

To determine the reasonableness of Miller's use of force, we must look objectively at Jason's use of the BB gun. In California, Jason's conduct violated the law:

"Every person who, except in self-defense, draws or exhibits an imitation firearm, as defined in subdivision (a) of Section 16700, in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor punishable by imprisonment in a county jail for a term of not less than 30 days." Penal Code § 417.4 [A BB gun falls within this section.]

In the case of Fetters v. County of Los Angeles, (2016) 243 Cal. App. 4th 825, 840-41, an analogous fact pattern was examined by the court. A juvenile

brandished a BB gun at a police officer who then shot him. Although injured, the juvenile did not die. The juvenile pled to a violation of Penal Code § 417.4, and then filed suit against the officer. The court found that the use of force by the officer was reasonable under the circumstances saying:

*“Here, there was no meaningful temporal break between the provocative act that Fetters admitted to in his criminal proceeding—brandishing an imitation firearm so as to put Sorrows in reasonable fear of his life—and the use of force by Sorrows that he claims was excessive and unreasonable.” Id., 840-41.*

Based on the law it is clear that Miller was reasonable in his belief that his life was in danger. Miller expressed his subjective fear to the arriving officers. Both objectively and subjectively, Miller has established that he was entitled to self-defense under the facts presented in the reports presented to this office.

### Conclusion

The facts established that Jason brought his BB gun to the park with him on the night of the shooting. Jason had tracked [REDACTED] to her location from the phone application he downloaded shortly before the fatal incident. It is reasonable to conclude that Jason intended to confront [REDACTED] and anyone with her while possessing/brandishing the BB gun. Tragically, Miller, when confronted by what he believed to be an armed man, shot in self-defense. Under these circumstances, the shooting of Jason Moland by Thomas Miller is determined to be justified and in self-defense.

Very truly yours,

BIRGIT FLADAGER  
District Attorney



David P. Harris  
Assistant District Attorney

CC: Chief Brent Smith, CPD