



Office of the District Attorney Stanislaus County

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PRESS RELEASE

For Immediate Release

Date: December 7, 2016
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 an officer involved shooting death that occurred on October 17, 2015, the shooting has been determined to be justified. Officer Michael Callahan happened upon an in-progress robbery of the Cruisers Gas Station on East Briggsmore in Modesto. He contacted the suspect, identified as Gino Paredes, as he fled the store. Paredes was armed with a replica firearm and did not drop his weapon as he left the store resulting in the officer discharging his firearm at Paredes.

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



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November 21, 2016

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

Re: Shooting of Gino Paredes

Dear Chief Carroll:

On October 17, 2015, Gino PAREDES (DOB 8/14/1993) was shot while committing a robbery of the Cruisers Gas Station by Officer Michael Callahan. As part of the county-wide shooting policy this investigation has been submitted to the District Attorney's Office for review (under MPD case #15-100156). Based upon a review of the submitted reports, audio and video evidence as well as the witness statements, it is our conclusion that the use of force by Officer Callahan was legally justified. To explain this finding, I begin with a brief summary of the known facts.

FACTS

On October 17, 2015 at approximately 0540 hours (5:40 a.m.), Officer Callahan pulled into the Cruisers Gas Station located at 4000 E. Briggsmore Avenue to get fuel. Off. Callahan parked his marked patrol car at a gas pump and began to fill up the patrol car. He was dressed in a marked police uniform. The gas station surveillance video captured the gas pump area. As Off. Callahan pumped the gas he saw a masked man jump over the wall near the side of the business and run into the store carrying what appeared to be a gun. The gunman can be seen running into the store on the surveillance video. He was later identified as Gino Paredes.

At approximately 0542 hours, Off. Callahan radioed that a robbery was in progress. Off. Callahan moved to the rear of his patrol car and then to the side of the pump building (also referred to as a kiosk) next to his car. He also activated his body worn camera (BWC). At this time, inside the store Paredes pushed two customers out of his way in front of the register and brandished what appeared to be a black Desert Eagle semi-auto handgun. Paredes demanded money, ran behind the register and took bills from the clerks. The situation was clearly frightening for the clerks and the customers (as captured on video).

Paredes ran from the store carrying the gun and the cash. He was immediately confronted by Off. Callahan who ordered Paredes to drop the gun. The commands to drop the gun were heard by several civilians on scene. Paredes did not surrender and was shot by Off.

Callahan. Paredes tried to run and jump the fence where he originally had come from, but was unable to; he dropped the gun and the cash from the robbery and fell to the ground. Off. Callahan advised dispatch that shots had been fired and the suspect was down.

A review of the videos clearly shows Paredes dressed as a masked robber, in all black, including wearing gloves and brandishing a gun. The BWC of Off. Callahan showed his vantage point from behind the pump wall, but the wall did block the view of the store's door from the BWC's point of view. The store security video did capture Paredes as he ran out the door with the gun in his hand towards the waiting officer. The gun recovered from Paredes turned out to be a .50 caliber US50 semi-auto CO2 handgun, otherwise known as a pellet gun, BB gun or imitation firearm. It had been painted black so that it appeared to be a real gun.

Pursuant to the county-wide shooting protocol an investigation into the shooting was commenced¹. The shooting scene was secured, video from the BWC was recovered as well as from the store security system, and percipient civilian witnesses were interviewed.

Paredes's father told the investigators that he had ordered his son and his son's girlfriend to move out of his (the father's) house just the day before the robbery. He said he told them to move out due to their drug use. Paredes's girlfriend, Cassandra Jimenez, revealed to investigators that Paredes bragged about robbing the Cruisers gas station in the past. She confirmed that she and Paredes had been kicked out for drug use prior to the robbery. She indicated that Paredes stole the gun from Walmart (although she claimed to not have seen him conceal it), painted it black (although she claimed to not have seen him paint it while they were together) and parked on the cul-de-sac behind the gas station (although she claimed to not know Paredes was going to rob the gas station). She said Paredes jumped the fence onto the Cruisers property and when she heard gunshots, she drove away. Prior to the robbery, she said Paredes did "a line" of methamphetamine. An autopsy on Paredes revealed that he had a "potentially toxic" amount of methamphetamine in his system as well as testing positive for morphine, a metabolite of heroin. Paredes was also determined to be on parole.

[REDACTED]

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 virtue of their need to enforce the laws that differ from the ordinary citizen. Some of these rights are codified in Penal Code §835a which 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.”

A legal justification for using deadly force is the law of self-defense. 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.”

The law of self-defense is also expanded for peace officers, since society has entrusted them with the right and often the need to use deadly force. The trust is codified in Penal Code §196, which says:

“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.”

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 Officer Callahan objectively and subjectively believed in the need for self-defense and was reasonable in his actions, he would be entitled to the protections of the rules of self-defense; if his actions were necessary, he would also be entitled to the protection of Penal Code §196. To determine the reasonableness of the use of force/necessity, we must look objectively at Paredes’s use of the pellet handgun.

From the statement of Paredes’s girlfriend, we know that he painted the gun which gave it the appearance of a real firearm. No one looking at the gun could tell at first glance that it was not real. We know Paredes brandished the gun during the robbery as if it were real, going so far as to point the gun at a store clerk and threaten to shoot her. Paredes’s conduct amounted to a robbery, a violation of Penal Code §211, a felony. Just displaying the gun as he did was a crime:

“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 or pellet gun falls within this section.]

In the case of Fetters v. County of Los Angeles, (2016) 243 Cal. App. 4th 825, 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.*

When Paredes ran in and out of the store with the gun in his hand he was viewed by the clerks and customers as a threat and they appeared terrified. The gun was visible to all who looked. After Paredes came out of the store and was confronted by Off. Callahan, Paredes still had the gun in his hand. Facing what appeared to be an armed and violent felon who just committed what appeared to be an armed robbery, Off. Callahan was both subjectively and objectively reasonable in firing on Paredes. The fact that Paredes may have almost instantly dropped the weapon did not change the “instantaneous” choice that Off. Callahan had to make.

“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.”

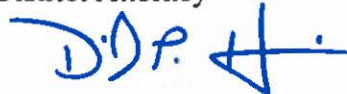
Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527-528

CONCLUSION

Based on the law it is clear that Officer Callahan was performing his job as a police officer when he attempted to stop/arrest Paredes who had just robbed a store. Paredes caused the chain of events that led to his shooting. Under these circumstances, the shooting of Gino Paredes by Officer Michael Callahan is determined to be justified.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Off. Michael Callahan