



Office of the District Attorney Stanislaus County

Birgit Fladager
District Attorney

Assistant District Attorney
David P. Harris

Chief Deputies
Annette Rees
Douglas K. Raynaud
Marlisa Ferreira
Stephen R. Robinson

Bureau of Investigation
Lt. David Hutchinson
Lt. Froilan Mariscal

PRESS RELEASE

For Immediate Release

Date: August 14, 2018

Re: Shooting by Officers 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 death that occurred on April 10, 2016, the shooting has been determined to be justified.

A copy of the letter provided to the Modesto Police 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



<https://www.facebook.com/StanislausDistrictAttorney/>



Office of the District Attorney Stanislaus County

Birgit Fladager
District Attorney

Assistant District Attorney
David P. Harris

Chief Deputies
Annette Rees
Douglas K. Raynaud
Marlisa Ferreira
Stephen R. Robinson

Bureau of Investigation
Lt. David Hutchinson
Lt. Froilan Mariscal

August 13, 2018

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

Re: Shooting of Lonnie BALL

Dear Chief Carroll:

On April 10, 2016, Lonnie BALL (DOB 07/29/1976) was fatally shot after refusing to drop a gun he had in his hand while violating a domestic violence restraining order. As part of the county-wide shooting investigation protocol this case has been submitted to the District Attorney's Office for review (under MPD case # 16-034713¹). 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 Officers David Wallace, Kalani Souza and Edgar Villalpando was legally justified. To explain this finding, I begin with a brief summary of the known facts:

FACTS

On April 10, 2016 at about 0642 (6:42 a.m.) the estranged wife of Lonnie Ball called 911 to report that her husband, the aforementioned Lonnie Ball (the decedent), was outside of her house (on Lance Street). She told dispatch Ball was the subject of/restrained by a domestic violence restraining order and that he was armed with a gun. Dispatchers broadcast the call to units in the area with the units responding code 3 – an emergency. The victim stayed on the phone and updated the dispatcher of Ball's actions as she waited for the officers to arrive.

The victim told the dispatcher that Ball used methamphetamine and appeared to be under the influence. [The CAD log shows that officers were advised that Ball was "647f" and "used meth."] She, the victim, advised that she was afraid he was going to hurt her. At 0706, the victim stated that Ball was kicking on her front door and had a gun in his pants. The victim next said that Ball had returned to his truck which she described to the dispatcher for the responding officers. Ball drove away as units arrived and a pursuit ensued.

¹ The last of the evidence videos were received in this office on June 28, 2018. These videos included the body worn camera footage of many of the officers on the scene. On July 31, 2018 the District Attorney's Office was provided with the statements of the three involved officers, with their consent.

Marked police units followed Ball's truck and tried to get him to stop. Ball refused to stop and drove around erratically. Ball led the pursuing officers around, flipping them off and making furtive movements inside his truck. Off. Souza and Off. Villalpando were partnered together in the lead police car, with Off. Souza driving. At different points during the pursuit officers broadcast that Ball had a gun, was making furtive movements and was trying to bait the officers to drive alongside his truck. Ball eventually drove back to the victim's house, and drove up onto the lawn/driveway area and exited his truck with the gun in his hand heading towards the entry (there is a large window and the front door in the general direction of his movement).

The pursuing units stopped immediately behind Ball. In the body worn camera (hereafter BWC) footage, officers can be heard stating that Ball had a gun. Off. Souza and Off. Villalpando were immediately behind Ball; Off. Wallace was to the side (on the left side of Souza's patrol car). Several officers yelled commands to Ball to drop his gun, but he did not comply. When Ball failed to drop the gun, continuing towards the house, the officers fired.² Ball's gun was determined to be a Glock handgun, loaded, with a round stuck in the ejection port. It could not be determined how this round ended up as it was. Ball did not survive.

Pursuant to the county-wide officer involved incident protocol the scene was preserved and an investigation was commenced. The physical evidence was collected and submitted for testing. At autopsy, Ball was found to have a blood alcohol level of .11% and tested positive for methamphetamine/amphetamine. The combination would clearly have clouded his judgment.

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 additional 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

² The BWC footage for each of the three firing officers had some issue; Off. Souza's BWC was blocked by the car door pillar, Off. Villalpando appeared to hit his BWC when he exited the patrol car which caused the camera to focus off from his line of sight, and Off. Wallace's BWC did not appear to be recording prior to the shooting.

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.”

Courts have also said that everyone enjoys the right of self-defense:

“If someone is confronted by the appearance of danger which causes in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation seeing and knowing the same facts, would be justified in believing himself in danger, and if the person so confronted acts in fear and with an honest conviction, his right of self-defense is the same whether such danger is real or apparent.”

People v. Jackson, (1965) 233 Cal.App.2d 639.

The right of self-defense also extends to the right to defend someone else from deadly harm. The U.S. Supreme Court stated many years ago that it was unconstitutional to shoot all fleeing suspects, but maintained:

“Where the officer has probable cause to believe that the suspect **poses a threat of serious physical harm, either to the officer or to others**, it is **not constitutionally unreasonable to prevent escape by using deadly force**. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, **deadly force may be used if necessary to prevent escape**, and if, where feasible, some warning has been given.”

Tennessee v. Garner, (1985) 471 U.S. 1, 11–12.

CONCLUSION

Based on the law it is clear that Officers Souza, Villalpando and Wallace were performing their jobs as police officers when they attempted to stop Ball. He had violated a restraining order and was armed with a gun; he had driven recklessly and was under the influence. When Ball returned to the victim’s house, the officers had already been told that he had tried to kick in the victim’s front door, therefore it was reasonable to presume he was going to attempt entry into the house again. The officers clearly commanded Ball to drop his gun and his failure to comply would raise any reasonable officer’s fear in the situation. If Ball were able to gain entry into the house, the victim’s fear that Ball was there to hurt her would in all likelihood come true. It would have been a dereliction of their duty had the officers not stopped Ball from harming the victim under these circumstances.

Each officer, when interviewed, believed that Ball posed a deadly threat to the victim. In addition, at least one officer perceived that Ball was turning towards officers with the gun forcing the officer to protect himself and his fellow officers. One of the officers stated his belief that Ball had driven the way that he had during the pursuit to “bait the officers into a confrontation” in an attempt to force the officers to defend themselves. This officer explained that Ball had driven back to the victim’s house, stopping at the end of the street and paused for a few moments before

accelerating into her driveway. The officer believed that Ball was getting up the courage to force the officers into a shoot-out. The behavior of Ball was documented by the BWC footage and it was not unreasonable for the officers to subjectively have the beliefs they did.

The test of reasonableness mandates both an objective and subjective belief in the need to use deadly force under the circumstances. There is no question, objectively, that Ball posed an immediate deadly threat to everyone around him, especially the victim. Ball was the subject of a domestic violence restraining order, meaning a judge had found that he posed a risk of danger to the victim and ordered Ball to stay away from the victim for her protection. Ball's failure to comply with a court order and show up drunk/under the influence armed with a gun would cause any reasonable officer to believe in the need to stop Ball from reaching the victim.

The three officers who discharged their weapons had all of the above information known to them and had pursued Ball after he initially fled from the victim's house. Ball's sudden return to the victim's yard, bolting from his truck and heading for the front of the victim's house was not an act of surrender or escape. The gun in his hand and Ball's focus on the victim made him a direct and immediate threat. The jammed gun even suggests that Ball may have tried to operate or fire the weapon. Under these circumstances, subjectively, the officers clearly believed he was a threat – a deadly threat.

Based on the totality of the circumstances, the shooting of Lonnie Ball by Officers Souza, Villalpando and Wallace is determined to be justified in self-defense and/or in the defense of others. This office views this matter as now closed.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Off. Kalani Souza
Off. Edgar Villalpando
Off. David Wallace