



# 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

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## **PRESS RELEASE**

### **For Immediate Release**

Date: September 10, 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 that occurred on December 7, 2013, the shooting has been determined to be justified.

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

# # #

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September 7, 2018

Sheriff Adam Christianson  
Stanislaus County Sheriff  
250 E. Hackett Rd.  
Modesto, CA 95358

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

Re: Shooting of Anthonie Allen

Dear Sheriff Christianson and Chief Carroll:

On December 7, 2013, Anthonie Allen (DOB 6/2/1994) was shot after he ran from officers and pulled a gun. The Sheriff's department has submitted the shooting investigation to the District Attorney's Office for review (under SO case # S13-044325, and MPD case #MP13-113112). Based upon a review of the submitted reports, witness statements, audio and video evidence, it is our conclusion that the use of force by Officer Tyler Houston was legally justified. To explain this finding, I begin with a brief summary of the known facts:

**FACTS**

On December 7, 2013 at approximately 1732 hours (5:32 p.m.), Officer Tyler Houston and Officer Brian Binkley were working a Street Gang Unit (SGU) patrol when they received a call about four suspects in an alley behind the liquor store at Vernon and Prescott drinking (in violation of municipal ordinances and possibly state law). The officers drove to the alley and observed the four subjects as reported.

Officer Binkley contacted the four as Off. Houston stood by as a cover officer. The four appeared to be Vernon Block gang members and were committing a criminal offense so for officer safety Off. Binkley started to pat them down, one at a time. As he started to pat down the third subject, the fourth/last subject (not patted down at this point) ran off on foot. Off. Houston chased after him. This suspect was later identified as Anthonie Allen.

Allen ran across the street and between two houses. As he was running, he was observed to pull a gun out of his waistband and extend the gun away from his body (instead of just dropping it or getting rid of it). Off. Houston was equipped with a body worn camera that captured the pursuit. A screen grab of the video shows Allen with the gun in his hand. (See below.)



Off. Houston gave commands to Allen, but Allen did not drop the gun or stop. At a point by a short fence between the two houses, Allen started to jump the short fence and turned towards Off. Houston while still holding the gun. Off. Houston fired his weapon and Allen fell to the ground. Allen's gun, a HiPoint 9mm handgun, was recovered nearby. The gun was reported stolen out the City of Patterson.

Pursuant to the county-wide shooting protocol, an investigation into the shooting was commenced. Allen suffered a single gunshot wound and survived. Allen was determined to be a gang associate, previously convicted of crimes that prohibited him from possessing a firearm, and he was charged with various offenses. Allen pled guilty to a violation of Penal Code §25400(a)(2) on May 2, 2017<sup>1</sup>. This crime is commonly referred to as carrying a concealed firearm.

## 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:

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<sup>1</sup> Pursuant to the county-wide officer involved incident policy, a review of the use of force is delayed pending the outcome of any criminal case that arises out of the same facts. Allen was charged in case # 1473741 with several counts relating to possession of the gun. Allen failed to appear in court and was arrested on a warrant in 2017; Allen's fugitive status for almost four years delayed this final report.



“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.”

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, and as said by another court:

“Justification does not depend on the existence of actual danger but on appearances. [Citations.] ... He [defendant] may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures.”

People v. Jackson, 233 Cal. App. 2d 639, 642.

## CONCLUSION

Based on the law, Officer Houston was performing his job as a police officer which allowed him to be where he was and contact the defendant. When Allen fled, he committed a criminal act necessitating Off. Houston to pursue him. The fact that Allen was armed during his flight from the police and pulled the gun out of his waistband would cause any officer to be concerned for his/her safety. The use of force by Officer Houston was measured and in direct response to the threat he perceived. In other words - it was reasonable. The facts are borne out by the video footage. In other words, the officer's use of force was not excessive. Under these circumstances, the shooting of Anthonie Allen by Officer Tyler Houston is determined to be justified. Further, the fact that Allen admitted his guilt establishes that Officer Houston was justified as well.

Very truly yours,

BIRGIT FLADAGER  
District Attorney



David P. Harris  
Assistant District Attorney

cc: Off. Tyler Houston