



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

January 8, 2014

Captain Duane Harris
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #13-0462
L.A.S.D. File #013-09063-2664-013

Dear Captain Harris:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 27, 2013, fatal shooting of Eugene Mallory, by Los Angeles County Sheriff's (LASD) Sergeant John Bones. We have determined that Sergeant Bones acted lawfully in self-defense and defense of others.

The District Attorney Command Center was notified of this shooting at 8:40 a.m., on June 27, 2013. The District Attorney Response Team (DART), consisting of Deputy District Attorney Shannon Presby and District Attorney Senior Investigator Regina Crenshaw responded to the scene. They were given a briefing of the circumstances surrounding the incident and a "walk-through" of the shooting scene.

The following analysis is based upon investigative reports, analyzed evidence reports and witness statements taken during the investigation by the LASD and submitted to this office by detectives from LASD Homicide Division. No compelled statements were considered for purposes of this analysis.

FACTUAL ANALYSIS

On June 27, 2013, members of the LASD Lancaster and Palmdale narcotics teams served a search warrant at 36644 117th Street East, Littlerock, California. This location is situated in a rural desert area of eastern Los Angeles County. The property searched consists of a main house and several smaller structures, including a barn, trailers, and storage containers.

Shortly after 7:00 a.m., Sergeant John Bones and Detective Patrick Hobbs approached the front door of the main house. Bones was audio recording the execution of the search warrant. That

Clara Shorridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
(213) 974-3888
Fax: (213) 620-1208
WEBSITE: <http://da.co.la.ca.us>

audio recording was provided to JSID by the LASD and reviewed as part of this analysis. Hobbs knocked on the front door and announced, "Sheriff's Department! Search warrant! Demand entry!" There was no response. Two seconds later, Bones announced, "Sheriff's Department, we have a search warrant." Again there was no response. After a few moments, Hobbs and Bones, along with LASD Sergeant Jeffery Siroonian, Detectives Robert Mittlburn, Nathan Grimes and Deputy Nicole Pepo, entered the house through the unlocked front door in an effort to clear and secure the house. As they were entering the house, Hobbs again announced, "Search warrant! Sheriff's Department!" There was no answer. Hobbs, Siroonian, Grimes and Pepo went one direction inside the house, while Bones and Mittlburn went in another direction.

Approximately 10 seconds after entering the home, Hobbs announced, "Sheriff's Department. Search warrant! Sheriff's Department! Make your self known!" Six seconds later, Hobbs announced, "Sheriff's Department! Make your self known!" Seven seconds later, Bones announced, "Sheriff's Department! We have a search warrant, anybody here?" Again there was no answer. Approximately 10 seconds later, Hobbs announced, "Sheriff's Department!" There was no answer.

Eventually, Bones and Mittlburn reached a doorway to a bedroom. Bones saw what appeared to be the lower half of a person, later identified as Eugene Mallory, lying on the bed under some bed covering. Bones was kneeling just outside the doorway and Mittlburn was standing behind him. At this point, which was approximately 35 seconds after entering the residence, one of the Sheriff's personnel announced, "Sheriff's Department! Sir, come on out!" There was no verbal response. Ten seconds later, Bones announced, "Sheriff's Department, we have a search warrant!" There was no audible response. Five seconds later, approximately 51 seconds after entering the house, Bones announced, "Come on out here! Let me see your hands first please!" Bones' verbal tone is firm but does not sound agitated. Two seconds later, a Sheriff's Department deputy yells in an agitated and frightened tone, "Whoa!" and gunshots are heard.

Bones stated that once he and Mittlburn reached the doorway to the bedroom and realized there was a person lying on the bed, he directed the person to let them see his hands. Suddenly, Mallory stood up and raised his right hand in the direction of Sergeant Bones and Mittlburn. As he raised his right hand toward Bones and Mittlburn, Bones saw that Mallory was holding a handgun. Fearing for his life, and the life of Mittlburn, Bones discharged his service weapon at Mallory.

Bones was armed with an H & K MP-5 9mm submachine gun. Based on the number of shell casings recovered at the scene, Bones fired seven times. Mallory suffered six gunshot wounds.

Before listening to the audio recording, Bones believed that he told Mallory to "Drop the gun" prior to the shooting. The recording revealed, however, that his commands to "Drop the gun" occurred immediately after the shooting. The recording also disclosed that approximately two seconds elapsed from the time Bones commanded Mallory to "Let me see your hands" until the time of the shooting.

Mittlburn stated that when he and Bones reached the doorway, Bones knelt down and Mittlburn stood behind him. Bones announced, "Sheriff's Department. Search Warrant. Make yourself known." Looking into the bedroom, Mittlburn saw a blanket moving on top of a bed in the bedroom. Bones stated, "Let me see your hands, come out." Mittlburn saw the right side of Mallory's body, now standing, and saw that Mallory had a handgun in his right hand. Mallory extended his right hand in the direction of Bones and Mittlburn. Mittlburn stated that he thought Mallory was going to kill either Bones or him, but could not safely fire his weapon for fear that if Bones stood up, Mittlburn would shoot him in the back of the head. Mittlburn heard Bones fire his weapon between four and eight times and saw Mallory's feet come up as though he fell back onto the bed.

After the shooting, Bones and other members of the entry team entered the bedroom. Mallory was lying on the bed. A loaded Ruger .22 caliber semiautomatic handgun was located in Mallory's right hand. Bones removed the handgun from the bed, placed it on a shelf attached to the bed's headboard and summoned paramedics. Los Angeles County Fire Department personnel arrived and rendered emergency medical treatment. Mallory did not survive his injuries and was pronounced dead at the scene. Mallory was 80 years old at the time of his death.

On July 2, 2013, Deputy Medical Examiner Martina Kennedy performed an autopsy on Mallory's remains. The cause of death was determined to be multiple gunshot wounds.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense, or defense of another, if it reasonably appears that the person claiming the right of self-defense or defense of another, actually and reasonably believed that he, or the person protected, was in imminent danger of great bodily injury or death. *See*, Penal Code § 197; People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082.

In protecting himself, or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. CALCRIM No. 505.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins (1961) 89 Cal.App.2d 575, 589.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... 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

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the amount of force that is necessary in a particular situation.” Graham v. Conner (1989) 490 U.S. 386, 396-397.

CONCLUSION

The evidence examined shows that Sergeant Bones was in the process of executing a search warrant. He and other members of the entry team repeatedly identified themselves as peace officers and ordered any occupants of the home to show themselves. Despite these repeated commands, Mallory did not verbally respond nor did he physically present himself. Instead, Mallory armed himself with a handgun and abruptly confronted Bones at the doorway to his bedroom. Despite Bones’ order to “Let me see your hands first please,” Mallory pointed his loaded firearm at Bones and Mittlburn placing Bones in actual and reasonable fear of death. Bones acted to end the deadly threat.

We conclude that LASD Sergeant John Bones acted lawfully in self-defense and in defense of Detective Mittlburn. We are closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By 

SHANNON PRESBY
Assistant Head Deputy District Attorney
(213) 974-3888

c: John Bones, #274628