

Office of the District Attorney
Alameda County
Nancy E. O'Malley, District Attorney



Rene C. Davidson Courthouse
1225 Fallon Street, Suite 900
Oakland, CA 94612

October 3, 2012

Chief Howard Jordan
455 7th Street
Oakland, CA 94607

Dear Chief Jordan:

Enclosed is the District's Attorney's Final Report on the fatal shooting of Alan Blueford which occurred May 6, 2012.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against Oakland Police Officer Masso.

As indicated in the report, no further action will be taken in this case.

A copy of the report will be available to the public no earlier than five calendar days after October 3, 2012.

Very truly yours,

NANCY E. O'MALLEY
District Attorney

NEO:t

Enclosure

DISTRICT ATTORNEY'S REPORT
ON
FATAL SHOOTING OF
ALAN BLUEFORD

By: Kenneth Mifsud
Senior Deputy District Attorney

Mike Foster
Inspector

Dated: October 3, 2012

INVESTIGATION OF THE SHOOTING DEATH OF ALAN BLUEFORD

INTRODUCTION:

The Alameda County District Attorney's Office has assembled an Officer Involved Shooting (OIS) Team, which consists of experienced senior, assistant and/or deputy district attorneys as well as experienced inspectors. Each month, a two-person team, consisting of an attorney and inspector, are assigned to respond to, investigate and evaluate cases where a person has died and a peace officer is involved. The OIS Team is authorized by agreement with each local law enforcement agency serving Alameda County, to conduct a separate but parallel investigation into the circumstances leading up to the death with the ultimate question of whether charges should be filed against the officer or anyone involved in the shooting. It remains the legal responsibility of the criminal division of the employing law enforcement agency to conduct the criminal investigation. It is also the legal responsibility of the Internal Affairs Division of the employing agency to conduct an administrative investigation of which the District Attorney's Office is not involved.

INVESTIGATIVE STEPS:

On or about May 6, 2012, at approximately 3:13 a.m., the on-call OIS Team was activated by a call from the Oakland Police Department that an officer involved shooting had occurred. The OIS Team consisted of Senior Deputy District Attorney Kenneth Mifsud and District Attorney Inspector Mike Foster. The OIS Team initiated an investigation into the shooting death of Alan Blueford.

The OIS Team was informed that an officer involved shooting had occurred at about 12:03 a.m., in the driveway of 9230 Birch Street in Oakland. The OIS Team responded to the scene of the shooting incident at which time, the scene was inspected after the decedent had been taken to Highland Hospital. The OIS Team went to the Homicide Division of the Oakland Police Department and participated in questioning the involved officers, Officer Miguel Masso and Officer Joe Fesmire.

In addition to the interviews of the two involved officers, the OIS Team has reviewed and analyzed the complete investigation compiled by Sergeant Sean Fleming, Oakland Police Department, including the statements of 39 civilian witnesses. The OIS Team requested and reviewed additional materials, including, but not limited to the Autopsy Protocol and the Coroner's Report, a videotape taken from a liquor store camera near the scene, and a burglary incident report pertaining to a discarded handgun found at the scene. Additionally, the OIS Team requested and obtained DNA and fingerprint test results on the discarded handgun, and reviewed the test results, and revisited the neighborhood in an effort to locate additional potential video recordings of the incident.

FACTS:

On May 5, 2012, shortly before midnight, Oakland Police Officers Miguel Masso and Joe Fesmire were patrolling the 9000 block of Birch Street. Officer Masso was driving a fully marked black and white police car and both officers were wearing standard issued Oakland Police uniforms. They had originally been dispatched to the area in response to a reported fight around 85th Avenue and Holly Street. The officers' normal beat runs from 82nd Avenue to 98th Avenue, below International. At the intersection of Birch Street and 90th Avenue, Officer Fesmire looked north and saw three African American males on the west sidewalk walking northbound on 90th Avenue. The men were each wearing oversized clothing and baggy hoodies of different colors, one in light gray (Ronell Obelton, hereinafter "Mr. Obelton"), one in dark gray (Alonzo Turner, hereinafter "Mr. Turner" 15-years old), and one in black and wearing blue jeans (Alan Blueford, hereinafter "Mr. Blueford").

The officers stopped their vehicle and observed the scene. There was a full moon out and the streetlights lit the sidewalk, giving the officers a clear view of the men as they walked down the sidewalk. No other people were present in the area at this time. The men turned around and looked back nervously at the officers. While continuing to stare at the officers, Mr. Obelton, standing in the middle of the group, moved his right hand to his waistband. This gesture suggested to Officer Fesmire the possibility that Mr. Obelton was conducting a security check for a firearm. Officer Fesmire and Officer Masso were extremely familiar with the area they were patrolling and knew it to have a reputation for high gun possession activity and violence. The two officers had arrested numerous people in the area for gun possession, including a recent arrest of a person who had run from them on 89th Avenue. Moreover, on the previous day, they arrested someone at 85th Avenue and International carrying a gun. This suspect behaved in the same manner as Mr. Obelton, checking his waistband and continuously looking back at the officers.

Based on their training and experience, the officers were aware that when an individual illegally possesses a concealed firearm on the streets of Oakland, and is with a group of people, it is often times the case that the person will transfer the gun to someone else in the group, when they detect a police presence. For example, an adult may pass off a gun to a juvenile because if arrested for illegal gun possession, the juvenile would face less severe consequences than the adult.

As the men walked further north, they converged very close to each other, at which point the officers lost sight of their hands. As all three men repeatedly stared back at the officers, Mr. Obelton switched spots with the person to his left, moving around from the middle of the group and walking diagonally toward the slotted wrought iron fence bordering a house. Mr. Obelton placed his left shoulder completely against the fence, causing Officer Fesmire to lose sight of the man's arm. The man proceeded to break away from the fence and continued walking. Officers Fesmire and Masso discussed their shared belief that the men were in possession of a gun and based on how close he was to the fence and the manner in which he broke away from it, the gun had likely been discarded through the fence by Mr. Obelton. A couple of weeks prior, Officers Fesmire and Masso were on 82nd Avenue when they observed a suspect behaving in the same manner. The suspect went up to the fence and he broke away. When the officers detained him,

they looked at the fence and found a marijuana package. The officers recognize that people will try to hide things when under surveillance by police.

First Contact

The officers pulled up to the men in front of 1931 90th Avenue with the driver's side of the vehicle against the sidewalk. As the officers began talking to the men, the men began looking up and down the street as if deciding whether to stay or run. The men seemed nervous and did not talk right away.

Officer Fesmire exited from the passenger side of the vehicle and immediately walked up to Mr. Obelton standing in the back of the group and handcuffed him. Officer Masso "commanded" the other two men to sit down on the sidewalk right away, stating, "Get on the ground." Officer Fesmire believed that there was still a chance that one of these men was armed with a gun, and therefore, the officers wanted to control their movements. The two men complied with Officer Masso's command and sat down. None of the three men were hostile toward the officers at any point during this exchange.

Officer Fesmire walked to the fence with Mr. Obelton, shined his flashlight and asked the man where he had discarded the unknown item. He did not speak. Officer Masso remained close to the fence with the other two men seated on the ground. Officer Fesmire looked briefly to try to visualize something behind the fence, but could not see anything.

The Pursuit

Moments after complying with Officer Masso's instruction to sit on the sidewalk, Mr. Blueford suddenly jumped up and started running. Officer Masso decided to pursue Mr. Blueford since he suspected Mr. Blueford could have been in possession of a firearm. Mr. Blueford ran north and crossed 90th Avenue towards Booker's Liquors. During the pursuit, Officer Masso yelled 10-15 times for the suspect to stop and threatened to tase him. The suspect's failure to stop added to Officer Masso's belief that he had a gun. Officer Masso observed that the suspect was running without pumping his hands. As Officer Masso ran across 90th Avenue, he noticed that the suspect's left hand was on his jeans and his right hand appeared to be at his waist area. After crossing 90th Avenue, Mr. Blueford ran through the parking lot of Booker's Liquors and continued east on the 9000 block of Olive Street.

After running past Booker's Liquors, Mr. Blueford turned south on 92nd Avenue and ran across the street. About midway down 92nd Avenue, Mr. Blueford became tired. Officer Masso increased his speed and closed his distance from the suspect, remaining 5-10 feet behind. As Mr. Blueford and Officer Masso approached the intersection of 92nd Avenue and Birch Street, a civilian witness was standing just west of the intersection on Birch Street. He saw Mr. Blueford running south on 92nd Avenue from Olive Street and then turn east onto Birch Street. He saw Officer Masso pursuing Mr. Blueford and yelling, "Stop! This is the police." This civilian witness also saw Mr. Blueford reaching into his waistband area as he ran down Birch Street. Up to this point, Officer Masso had never lost sight of Mr. Blueford during the pursuit and at no time did Mr. Blueford discard or attempt to discard any object.

The Shooting

After Mr. Blueford had turned east on Birch Street and had run approximately 20 more feet, he pulled a dark object out of his waistband with his right hand. Officer Masso stated that he "knew it" was a handgun. As he ran, Mr. Blueford held his jeans with his left hand and began pumping his right hand, enabling Officer Masso to see the front side of the gun. He could tell that it was a square-shaped semi-automatic gun, which indicated a capacity for more rounds. Officer Masso pulled his gun out of his holster.

The pursuit was now on the south sidewalk, approximately two to three houses down Birch Street and 10 feet before the driveway where the final shots would be fired. Mr. Blueford turned clockwise and pointed his gun directly at Officer Masso, making direct eye contact. This was the first time that a gun had been pointed at Officer Masso and he stated that it was the first time in his life that he thought someone was going to kill him. He explained, "I was scared... It scared the living crap out of me." Officer Masso went into "auto pilot" and could no longer hear.

As he pointed the gun at Officer Masso, Mr. Blueford continued moving, crossing over from the south to north sidewalk. Officer Masso was right behind the north sidewalk offset to the left and believed there was no reasonable cover for him to have taken. As Mr. Blueford pointed the gun, Officer Masso thought there could have been people behind him in Mr. Blueford's line of fire, and believed that there were no options available other than the use of his firearm.

Officer Masso was on the sidewalk, positioned next to a light pole just before the driveway of 9230 Birch Street when he fired his handgun at Mr. Blueford who was within five feet of the officer. Mr. Blueford was shot from within five feet. The area was visibly lit and no people were in the backdrop behind Mr. Blueford when Officer Masso shot. Officer Masso explained that he took this shot because he believed that his life was in danger after making eye contact with Mr. Blueford and that if he did not shoot, he would be killed.

Officer Masso does not know if he struck Mr. Blueford with his first shot. However, the shot caused Mr. Blueford to trip and fall forward head first onto the left side of his body. Mr. Blueford landed on the fence gate of the house where the party was taking place. The gate was closed, but the fence visibly buckled on Mr. Blueford's impact.

Four civilian witnesses were standing just a few feet in front of the driveway next to a parked car and saw Mr. Blueford hit the fence gate and fall down. They were attending a birthday party for their nephew at 9230 Birch Street. The party was attended by dozens of family members, ranging from young children to middle-aged adults, many of who were on the front porch, the sidewalk and in the street.

After Mr. Blueford fell to the ground, one of the civilian witnesses standing next to the parked car saw Mr. Blueford turn his body to the right and face Officer Masso. While Mr. Blueford was down, two other civilian witnesses who were next to the car, saw Mr. Blueford holding a gun in his hand, and one those two civilian witnesses observed Mr. Blueford pointing the gun at Officer Masso.

Officer Masso now stood within five feet of Mr. Blueford. Initially, Officer Masso believed his first shot had eliminated the threat. However, Mr. Blueford bounced off the fence and fell down, then turned clockwise with the handgun in his hand and again pointed the gun directly at Officer Masso. Officer Masso then shot at Mr. Blueford because he "went into survival mode" believing he would be shot and killed. Mr. Blueford remained in the same location where he had fallen against the fence when Officer Masso fired a third round at Mr. Blueford, which he fired because Mr. Blueford was still looking directly at him with the gun in his hand. As he was shooting, Officer Masso began stepping backwards and he believed that it was during this "backpedaling" that he took his fourth shot, hitting himself in the foot. The shots were fired in rapid succession until the threat was eliminated, at which point Mr. Blueford had fallen to the ground and no longer had possession of the handgun.

Immediately after the shooting, a black "Sig Sauer" semi-automatic 9mm pistol was found lying on rocks in the driveway, just a short distance from where Mr. Blueford was located. One of the party attendees pointed the gun out to police officers who arrived shortly after the shooting took place.

Within a few minutes of the shooting, medical emergency personnel arrived on scene and initiated life saving efforts on Mr. Blueford. However, Mr. Blueford could not be revived. Mr. Blueford had sustained three gunshot wounds: One entry wound located in lower right chest wall; a second entry wound located at the front face of his left shoulder, and; a third wound located near the center of Mr. Blueford's chest.

Videotape recovered from Booker's Liquors

In the early morning hours of May 6, 2012, Oakland Police Crime Scene Technician ("CST") Christensen traveled to Booker's Liquors at 1994 90th Avenue to view surveillance camera footage of a short portion of the foot pursuit. The first piece of the footage captured two subjects running north on 90th Avenue and turning east onto Olive Street. The second piece of footage captured Mr. Blueford holding his waist with his right hand and running along the north side of Booker's Liquor, with Officer Masso trailing a short distance behind. CST Christensen retrieved CDs of the footage for duplication purposes.

Examination of the Shooting Scene

CST Christensen retrieved a black "Sig Sauer" semi-automatic pistol, model P230, 9mm pistol with a 3.5 inch barrel from the center of the driveway of 9230 Birch Street, several feet from the street and close to even with the north end of the residence porch. One (1) "N CCI R 380 Auto" live round was recovered from the chamber and one (1) "Sig Sauer" magazine containing five (5) "N CCI R 380 Auto" live rounds were removed from the pistol.

Two (2) "Winchester 40 S&W" casings were collected from the eastern (right) portion of the driveway. A third casing of the same make was collected in the front yard grass of the residence, east of the driveway. Several pieces of lead and copper bullet fragments, as well as a single jacketing were discovered on the west (left) portion of the driveway, just north of the sidewalk.

Officer Neff located a fourth casing of the same make near the base of the west post of the driveway gate.

Examination of Officer Masso's Gun

Shortly after the incident, Oakland Police CST Yager examined the gun Officer Masso had fired during the incident. The gun was a black "Glock" 40-caliber semi-automatic pistol with a 4.5" barrel and was recovered from Officer Masso's duty belt. CST Yager unloaded the magazine from the gun and photographed eleven (11) Winchester 40 S&W, silver case/JHP live rounds and one (1) live round of the same make from the chamber.

Fingerprint Examination of the Pistol

The black "Sig Sauer" semi-automatic pistol recovered at the scene was processed for fingerprints. One visible fingerprint was located on the side of the ammunition magazine that had been retrieved from the pistol. The fingerprint was then compared with exemplar fingerprints belonging to Mr. Blueford, and was determined to be a match with the left thumb print of Mr. Blueford.

Scientific Testing of the Pistol

The black "Sig Sauer" semi-automatic pistol recovered at the scene was processed for scientific testing. A swab of the pistol produced a major donor DNA profile. Mr. Blueford could not be eliminated as the donor to that DNA profile.

Stolen Pistol Report

The 9mm pistol Mr. Blueford was in possession of was a stolen weapon that had been taken from a peace officer's home in Mountain House during a residential burglary on November 29, 2011.

Distance Traveled During Pursuit

Shortly after the incident, Alameda County District Attorney's Office Inspector Michael Foster measured the distance of the route Officer Masso pursued Mr. Blueford. Inspector Foster measured the distance from the location of the first contact with Mr. Blueford, Mr. Obelton and Mr. Turner, at 1931 90th Avenue, to the location of the shooting at 9230 Birch Street. Inspector Foster calculated the pursuit path to be approximately one quarter mile.

OFFICER STATEMENTS:

Statement of Officer Joe Fesmire

Officer Joseph Fesmire has been an Oakland Police Officer since 2007. On May 5, 2012, he was on duty in standard police uniform and riding as a passenger in a standard, black-and-white, marked duty car driven by Officer Miguel Masso.

Shortly before midnight, the officers were patrolling the 9000 block of Birch Street. They had originally been dispatched to the area in response to a reported fight around 85th Avenue and Holly Street. The officers' normal beat runs from 82nd Avenue to 98th Avenue, below International. At this time, the officers were patrolling a couple blocks north of International, but were still traveling within their district. At the intersection of Birch Street and 90th Avenue, Officer Fesmire looked north and saw three African American males on the west sidewalk walking northbound on 90th Avenue. The men were each wearing oversized clothing and baggy hoodies of different colors, one in light gray ("Mr. Obelton"), one in dark gray ("Mr. Turner" 15-years-old), and one in black ("Mr. Blueford"). Mr. Blueford was five foot six to five foot seven inches tall with a thin build and blue jeans.

The officers stopped their vehicle and observed the scene. There was a full moon out and the streetlights lit the sidewalk, giving the officers a clear view of the men as they walked down the sidewalk. No other people were present in the area at this time. The men turned around and looked back nervously at the officers. While continuing to stare at the officers, Mr. Obelton, standing in the middle of the group, moved his right hand to his waistband. This gesture suggested to Officer Fesmire the possibility that Mr. Obelton was conducting a security check for a firearm. Officer Fesmire and Officer Masso were extremely familiar with the area they were patrolling and knew it to have a reputation for high gun possession activity and violence. The two officers had arrested numerous people in the area for gun possession, including a recent arrest of a person who had run from them on 89th Avenue. Moreover, on the previous day, they arrested someone at 85th Avenue and International carrying a gun. This suspect behaved in the same manner as Mr. Obelton, checking his waistband and continuously looking back at the officers. Furthermore, Fesmire was aware that a murder had occurred earlier in the year in the 1300 block of 87th Avenue.

Based on his training and experience, Officer Fesmire was aware that when an individual illegally possesses a concealed firearm on the streets of Oakland, and is with a group of people, that person will often transfer the gun to someone else in the group, when police approach. For example, an adult may pass off a gun to a juvenile because if arrested for illegal gun possession, the juvenile would face lesser consequences than the adult.

As the men walked further north, they converged very close to each other, at which point the officers lost sight of their hands. As all three men repeatedly stared back at the officers, Mr. Obelton switched spots with the person to his left, moving around from the middle of the group and walking diagonally toward the slotted wrought iron fence bordering a house. Mr. Obelton placed his left shoulder completely against the fence, causing Officer Fesmire to lose sight of the man's arm. The man proceeded to break away from the fence and continued walking. Officers Fesmire and Masso discussed their shared belief that the men were in possession of a gun and based on how close he was to the fence and the manner in which he broke away from it, the gun had likely been discarded through the fence by Mr. Obelton. A couple of weeks prior, Officers Fesmire and Masso were on 82nd Avenue when they observed a suspect behaving in the same manner. The suspect went up to the fence and he broke away. When the officers detained him, they looked at the fence and found a marijuana package. The officers recognize that people will try to hide things when under surveillance by police.

The officers pulled up to the men in front of 1931 90th Avenue with the driver's side of the vehicle against the sidewalk. As the officers began talking to the men, the men began looking up and down the street as if deciding whether to stay or run. The men seemed nervous and did not talk right away.

Officer Fesmire exited from the passenger side of the vehicle and immediately walked up to Mr. Obelton standing in the back of the group and handcuffed him. He does not remember issuing verbal commands, but states that he possibly said, "Come here" or "Let me see your hands." Officer Masso "commanded" the other two men to sit down on the sidewalk right away, stating, "Get on the ground." Officer Fesmire believed that there was still a chance that one of these men was armed with a gun and therefore, the officers wanted to control their movements. The two men complied with Officer Masso's command and sat down. None of the three men were hostile toward the officers at any point during this exchange.

Officer Fesmire walked to the fence with Mr. Obelton, shined his flashlight and asked the man where he had discarded the unknown item. He did not speak. Officer Masso remained close to the fence with the other two men seated on the ground. Officer Fesmire looked briefly to try to visualize something behind the fence, but could not see anything.

Seconds later, Officer Fesmire turned around and saw Officer Masso in pursuit of Mr. Blueford. The man's arms were not pumping as he ran; rather, both of his hands were placed inside the front of his waistband, indicating that he was holding a gun in place. Further, the fact that Officer Fesmire had not found a gun behind the fence increased his suspicion that the man was running with a gun. Officer Fesmire lost sight after the pursuit crossed through the parking lot of Booker's Liquor.

Mr. Turner, who had not been handcuffed or checked for a weapon, began standing from the ground and looking around, apparently preparing to run. Officer Fesmire yelled at Mr. Turner to stay where he was, get down, and to not move. He ran over toward Mr. Turner, keeping his hand on Mr. Obelton who he had already detained. Officer Fesmire told Mr. Turner to sit down and proceeded to handcuff Mr. Obelton. Mr. Obelton began saying something, but Officer Fesmire did not hear what was said because he was focused on his partner's pursuit.

Officer Fesmire issued an advisory on the radio to restack their call and put them at 90th Avenue and Olive Street. He then stated on the radio, "Masso update." He heard other units responding Code 3 and Sergeant Mork requesting that the channels remain clear except for pertinent information, but there was no response from Masso, so he repeated the request. Officer Fesmire then heard approximately four gunshots east of his location. Officer Masso came through on the radio and stated, "Shots fired 9200 block of Birch Street."

Officer Fesmire placed both of the detained men in the car and drove eastbound on Olive Street. He mistakenly began traveling northbound, but corrected and made a U-turn to head south. Officer Fesmire did not see any people outside as he drove. As he approached the scene from 92nd Avenue and Birch Street, he saw Officer Masso in the driveway of a house on the north side of the street. There seemed to be street lighting and he could see a car parked in a driveway. Mr. Blueford was lying on his back, his head facing north and feet facing south, and Officer

Chris Marie was standing next to the body. There were people outside, but Officer Fesmire could not recall where they were positioned. He could see blood on the ground next to Officer Masso's leg and could tell that he had been shot in the foot.

Officer Fesmire parked facing east with the two subjects still in his car. As someone else remained with the detained men, Officer Fesmire spoke with Officer Masso. Officer Masso stated, "I swear he had a gun. I've been shot." Officer Fesmire grabbed Officer Masso's right side and walked him to a car at which point he was rushed to the hospital. Officer Fesmire informed other officers that he had detained two men and that no outstanding suspects remained. Someone else took custody of the two men and Officer Fesmire returned to 90th Avenue to conduct an inspection of the fence. He and Officer Garcia thoroughly searched the area, but found nothing. Officer Fesmire noted that the fence had been left without supervision between the shooting and his inspection.

Statement of Officer Miguel Masso

Officer Miguel Masso has been an Oakland Police Officer since 2008. Prior to that, he was a police officer for Morgan Hill Police Department, NYPD (2005-2007) and a military police officer with the U.S. Army from 1999-2005. On May 5, 2012, he was on duty in standard police uniform and driving a standard, black-and-white, marked duty car with his partner Officer Joe Fesmire in the passenger seat. He had no alcohol and had taken two Ibuprofen tablets before going on duty at 3:00 p.m. Officer Masso was wearing his Oakland Police Department ("OPD") uniform that bore OPD patches and a name tag. He also wore a duty belt that contained handcuffs, a baton, flashlight, ammunition, mace, a radio, a taser and his OPD issued Glock 42, .40 caliber semi-automatic handgun. The handgun was loaded with 16 live rounds. Officer Masso was also carrying a Smith and Wesson 9mm handgun that contained nine live rounds in the gun.

Shortly before midnight, Officers Masso and Fesmire were traveling westbound on Birch Street, approaching the 1900 block of 90th Avenue. The officers reached the second stop sign at the intersection of 90th Avenue and Birch Street and were preparing to make a southbound turn onto 90th Avenue when they saw three African American males crossing Birch Street onto the north sidewalk on the west side of 90th Avenue. As the officers stopped their car to observe the situation, the three males were positioned across the street on the northwest corner of 90th Avenue and Birch Street.

One of the men who was wearing a grey hoodie ("Mr. Obelton") caught the officers' attention when he made direct eye contact with Officer Masso. Officer Masso felt that the behavior exhibited by the three men was "a little suspicious." After the initial eye contact, Mr. Obelton avoided eye contact with Officer Masso; however, the other two men continuously looked back at the officers as they walked northbound on 90th Avenue. Mr. Obelton was standing on the left side of the group and he appeared to be approximately 18-years-old with light blue jeans and short hair. The other two men looked between the ages of 18 and 19 years of age and were wearing clothing of the same color, one of them in a black hoodie ("Mr. Blueford") and the other wearing a black jacket ("Mr. Turner").

The three men continued walking northbound on the northwest sidewalk of 90th Avenue. Mr. Obelton had his left hand swinging freely, but his right hand was stationary. Officer Masso's training and experience had informed him that often times, people carrying guns will frequently touch the side of their bodies to check the placement of their concealed handgun. He had recently attended an Alameda County Sheriff's Office training course that focused on fugitives carrying firearms. The course taught Officer Masso that an individual's body language can often time reveal if he is carrying a concealed handgun. Frequently, that person will "gun check" on his dominant side, by touching that side of his body. Furthermore, the course taught that imprints of guns can sometimes be seen through jeans, and if a handgun is located in a jacket pocket, one side will sag lower than the other.

During the previous three to six months, Officer Masso had seized 20-30 handguns from suspects on the streets of Oakland, and had seized five handguns in the previous two weeks. Officer Masso also knew the area of 90th Avenue in the vicinity of Birch and Olive Streets to have a high rate of violent crime and individuals armed with handguns. He had personally arrested two persons in the area of Booker's Liquors at 90th Avenue and Olive Street who were illegally carrying concealed handguns and was aware of numerous arrests by other officers in the area for gun possession, as well as narcotics possession. The behavior exhibited by Mr. Obelton led Officer Masso to suspect that he was in possession of a gun, and the officers began discussing this shared suspicion.

The three men continued walking northbound on 90th Avenue. At this time, there were people in the parking lot of Booker's Liquor, but no other people were in the vicinity. The officers began formulating a plan to initiate contact, deciding that if they did approach, they would ask the men if they had heard gunfire.

The officers drove across 90th Avenue and parked at the northwest corner of 90th Avenue and Birch Street. Officer Masso now had a clear view of the three men as they walked northbound. Mr. Obelton was walking along a fence and Mr. Blueford was walking on the right. After watching for 35-40 seconds, the officers observed Mr. Obelton place his right hand into his waistband, reach through a gate with the same hand and drop something. The officers discussed that Mr. Obelton had possibly discarded something inside the gate, but they did not see what the object was and Officer Masso continued to believe that Mr. Obelton could still be in possession of a gun. At this time, the officers resolved to make contact with the three men.

As the men continued to walk, Mr. Blueford moved across Mr. Obelton, effectively switching spots. Mr. Obelton was now located in the middle of the group and Mr. Blueford was positioned on the group's left side with all three men positioned within a foot of one another. The men began talking and began nervously looking back. Officer Masso believed that the men were now in a position where they could pass a weapon or contraband to the person that would face the least severe consequences.

The officers reversed their patrol car and stopped next to the three men, approximately 15-20 feet from where they had discarded something. The officers did not turn on their lights or sirens. The streetlights were functioning in this location and Officer Masso had a clear view of the men and their hands, enabling him to determine that he had not had any prior contact with any of the men.

As the officers approached, Mr. Obelton continued walking and the other two men stopped. At this point, the officers did not ask the men to stop or issue any commands of that nature; the two men had stopped voluntarily. Officer Masso was positioned closest to the three men and he asked them if they heard any gunshots. Officer Fesmire exited the patrol car first and came around the other side. Officer Masso proceeded to exit the patrol car and continued to ask if the men had heard any gunshots. He believed that Mr. Blueford responded that they had not heard gunshots. Officer Fesmire immediately detained Mr. Obelton, as the officer believed that this man had discarded a weapon or contraband. Officer Fesmire may have made an announcement on the radio at this time.

Because the officers were outnumbered, Officer Masso asked the other two men to sit down and cross their feet. They complied and sat down. During this request, Officer Masso did not display force, did not place either of the two men in handcuffs, and never told them they were under arrest.

After Mr. Obelton was detained in handcuffs, Officer Fesmire walked over to the location where the officers believed the man had discarded a weapon or contraband. The other two men began talking between themselves as they sat on the ground, but Officer Masso could not hear what they were saying. The men appeared to be nervous and continuously looked to their right and left as if looking for a mode of escape. However, Officer Masso determined that it was unnecessary to handcuff these two men because Officer Fesmire had already detained the primary suspect.

Suddenly, Mr. Blueford stood from the ground and began running. Officer Masso decided to pursue him because he believed that Mr. Blueford could have been in possession of a firearm or contraband, possibly handed to him by Mr. Obelton. Mr. Blueford ran north and crossed 90th Avenue. During the pursuit, Officer Masso yelled 10-15 times for Mr. Blueford to stop and threatened to tase him. Mr. Blueford's failure to stop added to Officer Masso's belief that he had a gun. Officer Masso observed that Mr. Blueford was running without pumping his hands. As Officer Masso ran across 90th Avenue, he noticed that Mr. Blueford's left hand was on his jeans and his right hand appeared to be at his waist. Officer Masso attempted to report his pursuit and gave Mr. Blueford's description on his radio, but his transmissions did not go through at any point during the pursuit. After crossing 90th Avenue, Mr. Blueford ran through the parking lot of Booker's Liquor and continued east on the 9000 block of Olive Street.

Once the pursuit reached the south sidewalk of Olive Street, Officer Masso had a clear view of both of Mr. Blueford's hands. During this portion of the chase, Officer Masso was offset to the left so as to remain out of the line of potential fire, running 10-15 feet behind Mr. Blueford. Mr. Blueford turned south on 92nd Avenue and ran across the street. At this time, both the officer and Mr. Blueford were running in the middle of the street. About midway down 92nd Avenue, Mr. Blueford became tired. Officer Masso increased his speed and closed his distance from Mr. Blueford, remaining five to ten feet behind. Officer Masso never lost sight of the man during the pursuit and at no time did Mr. Blueford discard or attempt to discard any object.

Mr. Blueford turned east on Birch Street and had run approximately 20 more feet when he pulled a dark object out of his waistband with his right hand. Officer Masso stated that he "knew it"

was a handgun. As he ran, Mr. Blueford held his jeans with his left hand and began pumping his right hand, enabling Officer Masso to see the front side of the gun. He could tell that it was a square-shaped semi-automatic gun, which indicated a capacity for more rounds. Officer Masso pulled his gun out of his holster.

The pursuit was now on the south sidewalk, approximately two to three houses down Birch Street and 10 feet before the driveway where the final shots would be fired. Mr. Blueford turned clockwise and pointed his gun directly at Officer Masso, making direct eye contact. This was the first time that a gun had been pointed at Officer Masso and he stated that it was the first time in his life that he thought someone was going to kill him. He explained, "I was scared... It scared the living crap out of me." Officer Masso went into "auto pilot" and could no longer hear.

As he pointed the gun at Officer Masso, Mr. Blueford continued moving, crossing over from the south to north sidewalk. Officer Masso was right behind the north sidewalk offset to the left and believed there was no reasonable cover for him to have taken. As Mr. Blueford pointed the gun, Officer Masso thought there could have been people behind him in Mr. Blueford's line of fire. Officer Masso did not make any physical contact with Mr. Blueford and believed that there were no other force options available other than the use of his firearm.

Officer Masso was on the sidewalk, positioned next to a light pole just before the driveway of a house when he fired his first shot. Mr. Blueford was shot from within five feet. The area was visibly lit and no people were in the backdrop behind Mr. Blueford when Officer Masso shot. Officer Masso explained that he took this shot because he believed that his life was in danger after making eye contact with Mr. Blueford and that if he did not shoot, he would be killed.

After the first shot, Officer Masso observed a house party with Hispanic people standing toward the rear of the house driveway, a car parked fully in the driveway with its front facing the street, and two to three people on the hood of a car parked facing west on the sidewalk.

Officer Masso does not know if he struck Mr. Blueford with his first shot. However, the shot caused Mr. Blueford to trip and fall forward, head first onto the left side of his body. Mr. Blueford landed on the fence gate of the house where the party was taking place. The gate was closed, but the fence visibly buckled on Mr. Blueford's impact.

Officer Masso now stood within five feet of Mr. Blueford. Initially, Officer Masso believed his first shot had eliminated the threat. However, Mr. Blueford bounced off the fence and fell down, then turned clockwise with the handgun in his hand and again pointed the gun directly at Officer Masso. Officer Masso then shot at Mr. Blueford because he "went into survival mode," believing he would be shot and killed. Mr. Blueford remained in the same location where he had fallen against the fence when Officer Masso fired a third round at Mr. Blueford, which he fired because Mr. Blueford was still looking directly at him with the gun in his hand. As he was shooting, Officer Masso began stepping backwards and he believed that it was during this "backpedaling" that he took his fourth shot, hitting himself in the foot. The shots were fired in rapid succession until the threat was eliminated, at which point Mr. Blueford had fallen to the ground and no longer had possession of the handgun.

Many people gathered outside and began screaming. Officer Masso believed that he told the crowd to get back. He got on his radio and gave his location. Officer Masso then realized he had been shot and could not walk because he was in a state of shock and unable to move his legs. Officer Masso was carried to a patrol car and taken to a hospital. He was not relieved of his gun immediately and once he arrived at the hospital, Officer Kearney left the gun inside the patrol vehicle.

WITNESS STATEMENTS:

After the incident, several Oakland Police Department officers canvassed the neighborhood and spoke to dozens of persons who attended the party or who lived in the area, in an attempt to obtain statements from persons who may have witnessed the incident. The police officers obtained statements from 39 civilian witnesses.

Statement of Ronell Obelton

Mr. Obelton was an 18-year-old student at Brenkwitz High School in Hayward, California. For one to two months prior to the incident, Mr. Obelton had been living with his grandfather, George Turner, at 1905 90th Avenue, Oakland. On the evening of the incident, Mr. Obelton was wearing a light gray hoodie. He walked outside of his grandfather's house with his cousin, Alonzo Turner ("Mr. Turner"), and immediately saw an African American male ("Mr. Blueford") standing outside. He was approximately 18-years-old, between five foot six and five foot seven in height, and had a muscular build. Mr. Obelton states that he did not know Mr. Blueford's name and had never seen him before this incident. Mr. Blueford signaled that he would sell Mr. Obelton and Mr. Turner marijuana by pressing his thumb and his index finger together and placing them up to his lips. Mr. Obelton agreed to buy marijuana from Mr. Blueford and planned on spending \$5.00, but he told Mr. Blueford that he would go to Booker's Liquor first.

During the above transaction and almost immediately after leaving the house, Mr. Obelton saw a police patrol car. Mr. Blueford walked in front of Mr. Obelton and Mr. Turner, apparently attempting to blend in with them. The police officers drove down 90th Avenue, made a U-turn in their patrol car and quickly stopped the three men two houses down from the corner of 90th Avenue and Birch Street, across the street diagonally from Booker's Liquor. Mr. Obelton was the first person to be stopped, and was immediately placed in handcuffs by the driver of the patrol car. Mr. Turner and Mr. Blueford were told to sit down, but neither was placed in handcuffs.

The officer asked Mr. Obelton if he had dropped something and walked him away from the other two men to look around the area. Mr. Obelton maintains that he did not drop anything. Unable to find anything that would have been dropped, the officer began walking Mr. Obelton back to the other two men, at which time Mr. Blueford ran.

Mr. Blueford ran up Olive Street. Mr. Obelton claims that Mr. Turner stayed because he did not know Mr. Blueford. The original driver of the patrol car placed Mr. Obelton and Mr. Turner in the patrol car and began driving in pursuit of Mr. Blueford. Mr. Obelton heard three consecutive gunshots. He did not learn of the shooting or Mr. Blueford's death until his interview.

ANALYSIS:

California law permits the use of deadly force in one's own self defense if it reasonably appears to the person claiming the right of self defense that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d. 731. In protecting himself, a person may use all force that he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury that appears to be imminent. These same principles apply when a person reasonably believes that great bodily injury or death is about to be inflicted upon another person to protect that individual from attack.

The killing of a human being at the hands of another is homicide and may be characterized as criminal, excusable or justifiable, depending on the circumstances. A homicide is justifiable if done in self-defense or defense of others, provided the actor actually and reasonably believed that the actor or others were in imminent danger of great bodily injury or death. In protecting their own lives or the lives of others, a person may use all force he believes reasonably necessary to prevent imminent death or great bodily injury.

CONCLUSION:

The OIS Team concluded a separate, albeit parallel, investigation and a thorough review of the facts and circumstances leading to the death of Alan Blueford. Senior Deputy District Attorney Kenneth Mifsud conducted a careful analysis of the law as it pertains to the facts of this case.

It is the conclusion of Senior Deputy District Attorney Kenneth Mifsud that there is not sufficient evidence to proceed against Officer Masso in this case. It is the conclusion of Senior Deputy District Attorney Kenneth Mifsud that there was sufficient basis for the officers to detain Mr. Blueford, and that Officer Masso had probable cause to believe that Mr. Blueford posed a threat of serious harm to him and to others present during the incident.

A. Officer Masso's Shooting of Mr. Blueford was Justifiable:

Officer Masso's description of the material facts leading up to the shooting of Mr. Blueford and the shooting itself, is uncontroverted by the evidence. Moreover, his version of events is corroborated by numerous percipient witnesses and the physical evidence in the case.

Here, Officer Masso lawfully detained Mr. Blueford when he reasonably believed Mr. Obelton was in a position and may have passed a firearm to Mr. Blueford while standing in close proximity on 90th Avenue. Moments after complying with Officer's Masso instruction to sit on the sidewalk, Mr. Blueford suddenly jumped up and started running. Officer Masso then lawfully pursued Mr. Blueford since he reasonably suspected Mr. Blueford was in possession of a firearm.

The evidence is clear that Mr. Blueford was, in fact, in possession of a loaded handgun and had the handgun out when he was shot by Officer Masso. The footage from the video camera during the chase showing Mr. Blueford holding his waist area with his right hand corroborates Officer Masso. Further, Officer Fesmire saw the beginning of the foot chase and saw Mr. Blueford with both hands placed inside the front of his waistband and not pumping his arms, as he fled from Officer Masso. Moreover, two civilian witnesses corroborate Officer Masso, since each saw Mr. Blueford reaching for his waistband as he fled. Furthermore, two of the closest percipient civilian witnesses to the shooting, who were standing next to a parked car just a few feet from where Mr. Blueford was shot in the driveway, both saw a handgun in Mr. Blueford's hand while he was on the driveway to the residence, and one of those two witnesses saw Mr. Blueford pointing the handgun directly at Officer Masso. A loaded Sig Sauer 9mm pistol was located a short distance from Mr. Blueford's body immediately after the shooting, corroborating the statements of the two civilian witnesses who were standing next to the parked car. Officer Masso observed Mr. Blueford take the gun out of his waistband and was in fact, holding the gun when he was shot. Additionally, the pistol recovered from the driveway was processed for both DNA and fingerprints. The DNA testing revealed that Mr. Blueford could not be eliminated as a donor and the fingerprint analysis revealed a left thumb print belonging to Mr. Blueford that was located on the ammunition magazine of the pistol. Finally, the 9mm pistol Mr. Blueford was in possession of was a stolen weapon that had been taken from a peace officer's home in Mountain House during a residential burglary on November 29, 2011 some 12 miles from Mr. Blueford's residence in Tracy, California.

The evidence is also uncontroverted that Mr. Blueford was facing Officer Masso as he was being shot. Three of the civilian witnesses who were standing next to the parked car in the driveway, all stated the Mr. Blueford was facing the officer before he was shot. Their observations are corroborated by the autopsy report which revealed that all three bullet entry wounds to Mr. Blueford were on the front side of his body: One entry wound was located in the lower right chest wall; a second entry wound was located at the front face of his left shoulder, and; the third wound was located near the center of Mr. Blueford's chest.

In his statement Officer Masso told investigators that he fired four shots from his handgun. This was corroborated by the number of remaining bullets found in his gun by CST Yager who unloaded the magazine from the gun and found eleven (11) Winchester 40 S&W live rounds and one (1) live round of the same make in the chamber. The gun has a capacity of 16 rounds. Additionally, four (4) Winchester 40 S&W casings were recovered from the scene of the shooting, and Mr. Blueford suffered three (3) bullet entry wounds and Officer Masso one (1), when he inadvertently shot his foot.

Each of the rounds fired by Officer Masso were justified since Officer Masso actually and reasonably believed that before each shot, Mr. Blueford posed a threat of serious harm to himself and to potentially dozens of people, including young children, who were attending the family party at 9230 Birch Street. During the pursuit, Mr. Blueford's failure to submit to Officer Masso's command to stop, coupled with the fact he made no attempt to discard his handgun, could reasonably be interpreted as a desire and intent to use the handgun against Officer Masso if necessary. Officer Masso fired the first round after Mr. Blueford had pulled the handgun out of his waistband and had pointed it at the officer. Officer Masso actually and reasonably believed

that his life was in danger after he had made eye contact with Mr. Blueford and that if he did not shoot, he would be killed. After the first shot, Mr. Blueford bounced off the fence and fell down, then turned clockwise with the handgun in his hand and again pointed the gun directly at Officer Masso. Officer Masso then "went into survival mode" and took a second shot at Mr. Blueford because he actually and reasonably believed he would be shot and killed. Mr. Blueford remained in the same location where he had fallen against the fence when Officer Masso fired a third round at Mr. Blueford. Officer Masso fired the third and fourth shots because in each instance, Mr. Blueford was still looking directly at him with the gun in his hand.

In the present case, Officer Masso fired his weapon in the actual and reasonable belief that he or others in the vicinity were about to be shot by Mr. Blueford, causing death or serious bodily injury. Given the totality of the circumstances as presented and corroborated by other witnesses and the physical evidence recovered, it appears that Officer Masso actually and reasonably believed he was in imminent danger of great bodily injury or death. There is a lack of evidence to support a prosecution against him. The Alameda County District Attorney's Office will take no further action.

By: Kenneth Mifsud
Senior Deputy District Attorney

Dated: October 3, 2012