

AN EXPOSE OF THE
"INVESTIGATION OF THE SHOOTING DEATH OF ALAN BLUEFORD."
Report, dated October 3rd, 2012

TO: NANCY O'MALLEY, ELECTED BY THE PEOPLE OF ALAMEDA COUNTY
AS THEIR DISTRICT ATTORNEY.

FROM: THE JUSTICE 4 ALAN BLUEFORD COALITION.

DATE: OCTOBER 16, 2012

INTRODUCTION

The Justice 4 Alan Blueford Coalition denounces the District Attorney's report on the shooting death of Alan Blueford issued October 3rd, 2012, written by Kenneth Mifsud, Senior Deputy District Attorney.

This report is biased and unprofessional, its workmanship so shoddy that it fails to meet the most basic standards of an investigative report. In particular it fails to explain the evidence; it states as facts physical locations and events that there is little or no support for other than Officer Masso's testimony; and it bases its conclusions almost entirely on the claims of a single individual, Officer Masso. Many of Officer Masso's claims are contradicted by several witnesses and some of them are unsupported by the evidence. The report makes no attempt to reconcile these contradictions.

The report issued was not worthy of the people of Alameda County, who elected a District Attorney to pursue the people's interest, not the interests of the Oakland Police Department, known far and wide for its reputation for lying, planting evidence, and refusing for nine years to reform itself while repeatedly promising to do so.

The Justice for Alan Blueford Coalition is pursuing an independent investigation into Alan's death by the United States Attorney General and the Department of Justice (DOJ) and from our Attorney General of California, Kamala Harris.

SUMMARY OF CLAIMS

The report comes to two conclusions: first, that Officers Masso and Fesmire had sufficient basis to detain Mr. Blueford, and second, that Officer Masso's use of deadly force was justified.

We believe neither conclusion is demonstrated by the evidence presented by the police report documents for the case or by the DA's report. We do not claim to know everything that happened that night, but what we do know is that the DA's report does nothing to balance the evidence and witness statements against Officer Masso's account of what happened; it fails to seek the truth; and it utterly

disregards the Equal Protection Clause of the Constitution of the United States as it relates to the initial stop.

ALAN BLUEFORD SHOULD NEVER HAVE BEEN STOPPED.

Mr. Blueford's stop and subsequent death were the result of racial profiling. The officers had no reason to stop these individuals other than their own prejudices. OPD statistics indicate that had the three individuals spotted across the street by Officers Masso and Fesmire been white, they would not have been stopped. Had these three individuals been female, they would not have been stopped. Had these three individuals been of a significantly more advanced age, they would not have been stopped. ¹

They were stopped precisely because they were young, black and male. They were wearing clothes of a sort that are the norm in today's culture ("the men were wearing oversize clothing and baggy hoodies"), yet which targeted them for suspicion. They had every reason to be nervous about police officers observing them precisely because of the racial profiling that police officers routinely do ("the men turned around and looked back nervously at the officers.")

In fact the police reverse cause and effect, which gives them the excuse they are looking for to stop, question and frisk. Young black men do not generally look nervously at police because they are doing something suspicious, they look nervously at police because police are likely to stop them or worse. Police then claim that "being nervous" is a sufficient reason to stop them.

Had there been no racial profiling of Alan and his companions, Alan would not have been stopped, and Alan would still be alive today.

THE USE OF DEADLY FORCE BY OFFICER MASSO WAS UNJUSTIFIED, BECAUSE THE EVIDENCE SUGGESTS THAT ALAN BLUEFORD DID NOT HAVE A GUN WHEN HE WAS SHOT.

The DA's report states: "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."

At this point -- by everyone's account -- Alan was on the ground, lying flat on his back.

Alan Blueford was mortally wounded by this third shot, and yet the only gun that could have been in Alan's hand was found twenty feet away from where Alan lay, up an inclined driveway, "atop a pile of garden rocks" and was only noticed

¹ In 2010, the Oakland Police Department released a statistical report on 45 officer-involved shootings in Oakland between 2004-2008, one third of which were fatal. Of the people shot, 37 were African-American and none was white.

several minutes later. Not a single witness mentions a gun leaving Alan and somehow moving up this inclined driveway twenty feet. The DA's report fails to account for how this gun, alleged to be in Alan's hand by Officer Masso, acquired wings and a will to move as Alan lay there bleeding out.

Both common sense and physics direct us to a simpler explanation: the gun found at the top of the driveway was not in Alan's hand when Officer Masso fired the third shot. Nor was it there when he fired the second shot, because all testimony agrees that they occurred one right after the other. Had it been in Alan's hand at that point it would have remained within a few feet of Alan.

Witnesses consistently report that Officer Masso stood over Alan for some time after the third shot, gun pointed. Yet no witness mentions another gun in the scene at that point.

We suggest that the evidence points to the conclusion that Miguel Masso lied, firing at least two shots at an unarmed man laying face up on the ground, execution style, in order to justify his use of deadly force.

The DA's report does not even think to mention this absolutely crucial inconsistency, let alone attempt to reconcile it with what happened.

OFFICER MASSO'S ACCOUNT OF THE FIRST SHOT HE TOOK AT ALAN IS UNSUPPORTED BY THE WITNESSES, NOR IS IT SUPPORTED BY THE EVIDENCE.

According to the DA's report:

"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... The shot caused Mr. Blueford to trip and fall..."

The DA's report does nothing to weigh the vast majority of the witness statements that state that Alan was down on the ground before Officer Masso shot him (11 of 12 that speak to the issue), contradicting Masso's claim that his first shot was fired while Alan was upright. The failure to include a single witness statement suggesting Alan was on the ground before any shots were fired, the witness statement which indicated that Alan did not have a gun, and the many witness statements that made no mention of whether Alan had a gun, is a stunning example of selectively using evidence. The investigators have apparently already assumed what they were trying to prove -- that Officer Masso was justified in his use of deadly force -- and then cherry-picked the evidence needed to support Officer Masso's claim about the circumstances surrounding his first shot.

The evidence report makes clear that no casing was found anywhere near

the location Officer Masso claims to be at when he fired the first shot. Casings almost always eject to the right and back from a trained shooter (<http://forcescience.org/articles/ShellCasingStudy.pdf>). In this case, the casing would likely have rolled into the street or up against the light pole. It most certainly would not have gone six feet forward, which is where three of the casings were found (the fourth was found, inexplicably, about twenty feet away, uphill, in the front yard of the house). The DA's report does not even discuss the casings, the casings' locations, and how they fit or do not fit with Officer Masso's account of the events that night.

Officer Masso's claim that he shot Alan while Alan was standing in front of the gate from five feet away from him is unsupported from the evidence and unsustainable from the vast majority of the witness statements. Yet the DA's investigation makes no mention of this, taking Officer Masso's account as gospel.

The fact is that the most likely scenario by far based on witness statements and the evidence is that Officer Masso was standing over Alan Blueford who was lying on the ground before the officer fired any shots. The fact that the DA's report didn't even address this inconsistency is one of the reasons we say that this work is unprofessional and shoddy.

THE DA FAILED TO DO THE MOST RUDIMENTARY INVESTIGATION OF THE SHOT SEQUENCE.

Officer Masso claims that he fired an initial shot at Alan Blueford while Alan was standing, which caused Alan to crash into the gate and fall to the ground. A few seconds later he then fired two more shots at Alan, and then one into his own foot. In other words, there was a detectible pause between the first and subsequent shots as Alan fell, turned, and allegedly pointed a gun.

The DA failed to note in the report whether this gunshot sequence is supported by Oakland's Shotspotter system, even though the police report itself notes that the Shotspotter system confirmed that four shots were fired. The Shotspotter system detects gunshots, and attempts to identify their location. If the system determined that four gunshots took place, then it must have determined the time each shot went off.

The investigators could have either corroborated the timing of the shots with Officer Masso's account or contradicted his account with data from Shotspotter. That the DA investigators failed to do so is inexplicable, or if they did do it, that they failed to mention it in what should have been a professional report is inexcusable.

THE DA'S REPORT FAILED TO EVEN ASK, ADDRESS OR ATTEMPT TO ANSWER QUESTIONS SUCH AS:

- A pool of blood is noted in the police report. But no pool of blood is marked on the evidence map. Why?
- Was there anything on the gun to indicate that it might have landed on rocks after being tossed (e.g., scratch marks or dents) or skipped along the ground (e.g., skid marks)?
- Was DNA evidence on the gun checked against other people who were at the scene? If not, why not?
- Why is there no picture of the gun as it was found? The only pictures of the gun are with the magazine removed, after a technician says it was disassembled.
- Why were there no reports by technicians at the scene concerning blood spatter? There may have been blood spatter on the gate, on the car parked in the entrance to the driveway, and all about the driveway pavement.
- Why is there no discussion about the approximate distance the shots that hit Alan were fired from? Is this not what a coroner's report should be able to determine?
- Officer Masso chased Alan Blueford for one fourth of a mile before he caught and shot him. He claims that during the chase he could see both of Alan's hands. Where was the gun? If Alan had been carrying the gun during the chase he would have had to secure it with his hands to avoid it falling from his baggy pants and top.
- Where did the gun come from? OPD claims it was in a safe that was stolen in a burglary of a police officer's home in Mountain House (near Livermore) in 2011. Is there a police report on this burglary? Have any of the other stolen weapons been found?
- Why, when Officer Masso claimed that Alan turned and pointed a gun at him on the South sidewalk of Birch St, did the officer not open fire, given that he states that his weapon had been drawn prior? Did any investigators ask Officer Masso this question? If so, his answer is not recorded.
- Why, when Alan subsequently crossed Birch Street from south to north -- according to Masso's account -- did the officer not seek cover amid the cars shown parked alongside by the evidence map? Why would he follow at close range a man who was pointing a gun at him or had just been pointing a gun at him?
- Why was there no video from Officer Masso's lapel camera? Why was there no video from Officer Fesmire's camera? Officers are supposed to turn these on when they engage the public, and there was no emergency that they were responding to as they pulled up on Alan Blueford and his companions on 90th Street. They had plenty of time to engage their cameras. Had Officer Masso had his camera on the entire controversy surrounding Alan's death might be non-existent!

THE DA FAILED TO TAKE INTO ACCOUNT THE IMPLICATIONS OF WITNESS STATEMENTS OR THE LACK OF WITNESS STATEMENTS.

Multiple witnesses say that they heard Alan say "I didn't do anything!" This is not noted in the DA's report. If a man had indeed pointed a gun at a police officer this seems a very strange thing for him to say moments later.

Officer Masso told Officer Fesmire that "I swear he had a gun. I've been shot." The possible implication of this statement is obvious: at the time of the statement Officer Masso realized that Mr. Blueford did not in fact have a gun, whatever his mental state might have been earlier. Yet such a possibility is not discussed in the report.

No witness reports Officer Masso and Alan as having been on the South sidewalk of Birch Street, yet Officer Masso's account states that they were both there.

No witness reports Officer Masso and Alan crossing Birch Street from south to north immediately before the shots were fired, yet Officer Masso's account states that this happened.

No witness reports a gun moving from Alan's hand to 20' up the driveway. And yet, this is what the DA's report implies must have happened, without discussing the violations of the laws of physics necessary for this to occur.

No witness reports ANYTHING that happened in the interval between when Officer Masso had fired his last shot and was standing over Alan, still pointing his weapon at him, and the time that other officers arrived at the scene. Yet this interval is described by multiple witnesses as of "several" minutes duration. The report indicates that the DA's office did NOT attempt to re-interview any of the witnesses who reported this several minute gap, or any other witness.

Many of the witnesses were Hispanic. Yet none of the witness statements were reported as being taken in Spanish. The DA's investigators seem to have made no attempt to go back and re-interview witnesses, some of whom may be native Spanish-speaking and might have provided a clearer account if interviewed in their first language.

THE DA'S REPORT FAILS TO ADDRESS WHETHER OFFICER MASSO'S DECISION TO FIRE HIS FIRST SHOT WAS RATIONAL.

The report says that after Alan crosses Birch Street, Officer Masso and Alan find themselves on the north sidewalk. Officer Masso shoots Alan for the first time, because he feared that there were people behind him in Alan's line of fire. But there were people scattered all about, some apparently within a few feet of the gate, some apparently on or near the sidewalk (one witness says that at this moment Alan tripped over her companion), some were in the driveway. Some were children. Despite Masso's claim that no one was in the line of fire or close to it, this seems impossible given the number of people who seemed to be about and the statements of the witnesses. In fact the report says many witnesses were "on the front porch." These people would have been directly in the line of fire should a bullet fired by Officer Masso have missed Alan. Furthermore, given the amount of metal (gate, fences and car) about, a wide concrete sidewalk and a concrete

driveway, the possibility of deadly ricochets seems like it must have been a very real one.

THE DA'S REPORT FAILS TO ADDRESS THE IMPLICATIONS OF OFFICER MASSO HAVING SHOT HIMSELF IN THE FOOT.

Officer Masso has been a police officer for many years, as well as doing a tour of duty in Iraq as a Military Policeman. The idea that he would shoot himself in the foot, accidentally after firing three shots in a forward direction is, to put it mildly, suspect.

The report mentions that this happens, yet fails to discuss this or what it might mean. We will not speculate; suffice to say it merits more than a simple statement that it occurred, all that was provided by the report.

THE DA'S REPORT CONTAINS STATEMENTS LABELLED AS FACTS THAT ARE NOT FACTS, DEMONSTRATING SHODDY WORK.

"Immediately after the shooting, a black 'Sig Sauer' automatic 9mm pistol was found..."

Every police report, tech report and witness statement notes that the gun was not noticed until several minutes later.

"The men were each wearing... baggy hoodies."

Alan Blueford was not wearing a hoodie. The Crime Scene Technician Report states that Alan was wearing a Raiders baseball hat.

"Officer Masso was on the sidewalk, positioned next to a light pole... when he fired his handgun."

As discussed, neither the evidence nor the witnesses support this claim.

"Within a few minutes of the shooting, medical emergency personnel arrived on the scene and initiated life saving efforts on Mr. Blueford."

The police reports and witness statements suggest that police officers, not medical personnel, first arrived on the scene, assisted Officer Masso, and then attempted life-saving efforts on Alan.

The DA's report states as fact that "No other people were present in the area at this time." referring to 90th Street where Alan and his two companions were detained. But one of the witnesses interviewed states that he was in a front yard on 90th Street and observed the stop.

THE DA'S REPORT FAILS TO TAKE INTO ACCOUNT COMMON KNOWLEDGE.

It is impossible for someone to run with baggy pants without holding them up by the waistband. Men with baggy pants are often tugging at their waistband to pull up their pants, as can be observed every day in Oakland, CA.

The DA's report makes mention several times of "reaching for his waistband" as if this is highly suspicious in and of itself, when in fact it is an everyday action by a significant percentage of Oakland's population.

THE DA'S REPORT FAILS TO QUESTION THE EVIDENCE GATHERING, WITNESS STATEMENT GATHERING, AND APPARENT EVIDENCE DESTRUCTION THAT TOOK PLACE AFTER THE SHOOTING TOOK PLACE.

As mentioned previously, there is no hint of blood spatter analysis.

According to police reports, the area was 'washed down' to eliminate biohazards (blood evidence?) a couple of hours after the shooting occurred.

As mentioned previously, there is a significant question about whether witnesses were interviewed in their first language. The witness statements also often do not provide crucial information -- such as where the witness was, and which direction they were looking in -- as they observed what they were reporting on.

CONCLUSION

We would note that the problems and concerns we have laid out were discovered partially from police documents that were made public in highly redacted form, with some clearly relevant information blacked out. That so much is wrong with what the police were willing to share with the public is indicative of how many more problems there might be should the entire, unredacted report eventually be made available.

Again, no one knows everything that happened just past midnight on May 6th, 2012 at and around 9230 Birch Street. What we do know is that the DA's report, which relies on Officer Masso's recollections, is probably not consistent with the evidence and witness statements. The evidence and witness statements lead us to different conclusions than those found in the report; regardless, conclusions should have been determined by a full, professional investigation.

That the DA's report never once brings the problems up we have discussed, let alone attempts to address them, is unprofessional, it shows bias in taking on faith police statements, and is further evidence the criminal justice system is not interested in the truth; it is only interested in protecting and preserving its own.