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PRESS RELEASE

For Immediate Release

Date: March 11, 2011
Re: Officers cleared in shooting

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Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that the District Attorney's Office has completed its review of the circumstances surrounding the shooting of Francisco Moran by officers of the Modesto Police Department. The Office has determined that the shooting was justified. A redacted copy of the review is attached to this press release. In the interest of protecting the privacy of civilians who were involved, including some minors, those names have been redacted in full or in part.

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February 18, 2011

Chief Michael Harden
Modesto Police Department
600 10th Street
Modesto, CA 95354

**** R E D A C T E D ****

Re: Shooting of Francisco Moran

Dear Chief Harden:

This office has completed its review of the shooting that occurred on September 6, 2010 of Francisco Elias Moran (DOB 8/23/65) at 524 Mary Todd Lane in the City of Modesto. Based on this review, I must conclude that Officer Joseph Lamantia, Officer Robert Laxton and Officer Bradley Peterson¹ acted in self-defense.

SUMMARY

On Monday, September 6th, 2010, shortly after midnight, neighbors of the house located at 524 Mary Todd Lane called 911 to report that a female at that location was being beaten. The caller reported that the female victim was screaming for help and the caller could hear her (the victim) being hit. The investigation established that the following events took place:

¹ Officer Peterson did not fire his duty weapon; he used a Taser, an electronic control device (ECD). An ECD has not been found to be a deadly weapon, but for the purpose of this letter and legal analysis it will be discussed because if "deadly force" is found to be justified, then the use of less-than deadly force would also be justified.

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Luz called 911. (The 911 call log shows this call came in at 0003.) The dispatcher told Luz to go outside because she could not be heard over the screaming. However, the phone was unplugged during the call by Francisco. Luz saw that Francisco had disconnected the phone and then watched as he walked to the kitchen near the sink and picked up an item. Francisco put the item behind his back. Luz believed the item was a large butcher knife that had been near the sink, and she asked Francisco, "Why do you need a knife?" Francisco never told Luz what he had and kept moving away from her so that she could not see what the item was.

When 911 received the original call from Luz, screaming could be heard, then the caller stopped talking and the line was disconnected. A dispatcher sent police units to the house and, at about the same time, another 911 call was received from the house.

The caller this time was Fedra. Fedra told the 911 dispatcher that she, Fedra, was calling from the house and that her dad was drunk. Fedra explained to the 911 operator that her dad, Francisco, had pushed her grandfather to the ground.

Fedra also told the operator that her dad, Francisco, had a knife. Fedra said she had locked herself in the bedroom with her 11-year-old sister ([REDACTED]) and 10-year-old cousin ([REDACTED]). Fedra had used a cellphone to call 911 from her bedroom, telling dispatchers about her dad, the fighting and that "this time he had gone way too far."

The 911 dispatchers sent officers to the house and described the situation as a 415 (fight) between a father and grandfather, and that the dispatcher could hear a female screaming. As dispatchers received more information from Fedra and other callers, the responding officers were updated and told that a female was screaming for help and that Francisco was armed with a knife. The officers were also told that Francisco was 647(f). [647(f) is the Penal Code section for being drunk.]

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Dispatchers continually updated the officers who were en route to the Mary Todd Lane house with information from Fedra. During one update, the dispatcher relayed that the daughter was “afraid that the responsible will 187 the grandpa.” [187 is the Penal Code section for murder.] An officer then asked the dispatcher what the weapon was and the dispatcher replied it was a “knife.” Fedra remained on the phone with the 911 dispatcher to describe what was happening.

Luz knew the police were coming because 911 had called back to the house. Luz tried to get the item that she thought was a knife away from Francisco before the police arrived. Luz would later tell investigators that Francisco said “I’m not leaving this house alive. The police are going to have to shoot me.”

When Francisco had originally gone outside at the start of the fight, he had not closed the door upon his return into the house. Luz saw officers, in uniform, come to the door. The first officers on scene were Officer Joseph Lamantia, Officer Robert Laxton and Officer Bradley Peterson. Officer Peterson also had his K9 with him. The officers began giving Francisco commands to get on the ground, but he would not comply. Officer Lamantia and Officer Laxton entered the house with their guns drawn.

Officer Peterson would later tell investigators that the occupants of the house were arguing with a male subject (Francisco) who matched the description dispatchers had provided regarding the call. The subject was within 10 feet of his family and the officers. [At that moment, located within the small living room and hallway area were Francisco, Luz, ■■■■■, Maria and Luis, who was on the floor.] A female in the room yelled out that Francisco “still has the knife on him.” Officer Peterson looked and could see a black handle protruding from the subject’s waistband. When the officers first confronted Francisco, they radioed to dispatch that they “have him at gunpoint. He’s got a knife.”

The officers gave Francisco several commands, but he did not comply. Francisco said to the officers, “you know what you have to do.” Officer Peterson said Francisco repeated this statement approximately three or four more times. Officer Peterson said he believed the subject wanted the officers to shoot him. Officer Peterson believed that if he deployed his K9, the dog would be killed so

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his only option was a Taser. Officer Peterson advised the other officers that he was going to deploy his Taser.

Officer Peterson fired his Taser at Francisco and thought that it worked for a brief moment, but it turned out to have no effect. Officer Peterson said the Taser only made Francisco angrier. Officer Peterson started to back out and away from Francisco with the K9 when he saw Francisco reach for the handle in his waistband. As Francisco grabbed the handle, he began moving towards Officer Lamantia and Officer Laxton. Luz confirmed that she, too, saw Francisco pull the item she thought was a knife out from behind his back. Officers Lamantia and Laxton fired their duty weapons striking Francisco several times and he fell to the floor. It wasn't until after the shots had been fired that anyone realized that the item Francisco pulled was not a knife.

Francisco did not survive his wounds. Pursuant to a county-wide protocol, an investigation into the shooting was immediately commenced. The scene was documented and all those present were interviewed. Luis was transported to the hospital where he had to have surgery for the broken hip caused by Francisco. Luz was found to have bruises on her arm that were believed to have come from the fight with Francisco.

During her interview, Fedra said she heard the officers tell Francisco to get down on the ground, but he wouldn't. She said her dad made a statement about not going to jail. Fedra explained that her mom had told her that her dad had said that he wanted to die. According to Fedra, her dad still had the "knife" in his back waistband during the Taser application. After the shooting when Fedra and the others left the house and passed by Francisco's body, she still thought that her dad had a knife.

Luis was interviewed at the hospital prior to having surgery for the broken hip he received when he was assaulted by Francisco. Luis said that Francisco had a knife.

█, who was in the livingroom/hallway area at the time of the shooting, later told Det. Evers that Francisco had a "knife tucked in his waistband of his pants." █ said that when the officers arrived at the house she yelled to them,

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“my dad has a knife on him.” The officers told Francisco to get on the ground several times but he didn’t. ■■■ related that the Taser had no effect on her dad and that he said something like “he wants to die.”

A neighbor confirmed that the police had identified themselves and had ordered the subject to get on the ground. The commands were loud enough that the neighbor could hear them.

Maria, also interviewed after the shooting, stated “she did not know if the officers could have done anything different to avoid the shooting because they were telling Francisco to be quiet and calm down, but he would not cooperate with them.” She said that after the Taser, Francisco had reached for something behind his back.

The Taser was inspected by an ECD expert and it was determined to have functioned normally, however no circuit had ever been created. The lack of a circuit meant that no current was discharged into Francisco and, therefore, the Taser had no effect. A review of the 911 recordings establishes that there is at least a one minute interval from when Fedra tells the dispatcher that the officers have arrived to when the shots can be heard on the recording. This is the time period described by the witnesses as when Francisco refused to comply with the officers’ directions.

As part of the follow-up investigation, the police interviewed Francisco’s other relatives and friends. A friend of Francisco, Benigno ■■■, told investigators that Francisco had called him at about 11:00 p.m. on 9-5-10. Benigno related that Francisco had problems at home with his wife and in-laws and Francisco had said he “had no say in his own home.” Another witness, a relative of Francisco, Jerimis ■■■, said that Francisco had problems because he was disabled, had financial problems and no employment. Jerimis also indicated that Francisco had problems with his in-laws.

At the time of his death, Francisco was found to have a blood alcohol level of .28%. The cause of death was determined to be multiple gunshot wounds.

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It was determined during the investigation that the lights were not on in the living room area. Also, a closer inspection of Francisco's body revealed that what everyone thought was a knife was actually a metal spatula with a black handle. Two photos are included here to show the reasonableness of the witnesses' belief that Francisco had a knife.

Flat portion visible



Flat portion concealed



LAW

The legal review of any officer involved shooting cannot simply start at the law of self-defense, since the law and society has given police officers broad powers to allow them to perform their required tasks. The first such law is Penal Code §835a, and it 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.”

The rights conferred under “835a include the right to make a detention, which is an act that is less than an arrest. The U.S. Supreme Court has said the analysis that should be applied to an officer's use of force is the same as is applied

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to a review of a Fourth Amendment issue. One Court of Appeals has distilled this area of law into the following passage:

“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. [T]he question is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 343 (Martinez), quoting Graham, supra, 490 U.S. at pp. 396-397.) In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required. (Edson v. City of Anaheim (1998) 63 Cal.App.4th 1269, 1273 (Edson).

“We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (Martinez, supra, 47 Cal.App.4th at p. 343.) Placing the burden of proof on the plaintiff to establish that an officer's use of force was unreasonable “gives the police appropriate maneuvering room in which to make such judgments free from the need to justify every action in a court of law.” (Edson, supra, 63 Cal.App.4th at pp. 1273-1274.)

Where potential danger, emergency conditions, or other exigent circumstances exist, “[t]he Supreme Court's definition of reasonableness is ... “comparatively generous to the police....” “ (Munoz, supra, 120 Cal.App.4th at p. 1103.) “In effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases....”” (Ibid.) A police officer's use of deadly force is reasonable if “”the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”” (Ibid.) “Thus, “an officer may reasonably use deadly force when he or she confronts an armed

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suspect in close proximity whose actions indicate an intent to attack.”” (Ibid.)”

Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527-528

After taking into account the rights and protections that police officers have, and must have to do their duty, we can proceed to review the law of self defense as it applies to police officers. In California, all criminal juries are instructed by judges regarding the law from a tool called Judicial Council Criminal Jury Instructions, also known as CalCrim. CalCrim instructions are the law of the land and must be used in all criminal prosecutions. The law of self defense from CalCrim, as it relates to police officers is contained in CalCrim 507 “Justifiable Homicide - By Public Officer.”

CalCrim 507 would read as follows:

The defendant is not guilty of murder if he killed someone while acting as a public officer. Such a killing is justified, and therefore not unlawful, if:

1. The defendant was a public officer;
2. The killing was committed while arresting a person charged with a felony who was resisting arrest or fleeing from justice, overcoming actual resistance to some legal process, or while performing any other legal duty;
3. The killing was necessary to accomplish one of those lawful purposes;

AND

4. The defendant had probable cause to believe that Francisco Moran posed a threat of serious physical harm, either to the defendant or to others or that Francisco Moran had committed battery upon a spouse in violation of Penal Code section 273.5.

A person has probable cause to believe that someone poses a threat of serious physical harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.

An officer or employee of the Modesto Police Department is a public officer.

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The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant not guilty of murder.”

In the case of Foster v. City of Fresno, (2005) 392 F. Supp. 2d 1140 the court was faced with the 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.

ANALYSIS

The undisputed facts in this case are that Officer Joseph Lamantia, Officer Robert Laxton and Officer Bradley Peterson were called to a house where a fight was occurring. Witnesses in the house and neighbors reported that Francisco was out of control and someone was screaming for help. The officers were told that Francisco had a knife. The officers were told that it was feared by someone in the house that Francisco would kill Luis.

By the time that the officers arrived, Francisco had assaulted Luz (a felony violation of Penal Code §273.5 - domestic violence) and Luis (a felony violation of Penal Code §245(a)(1) - assault likely to cause great bodily injury). The officers, once they arrived, would have ample “probable cause” to arrest Francisco for two felony offenses.

When the three officers approached the front door it was apparent that the fight was still on-going. Multiple family members were still in the immediate area of Francisco and had no way to get out of the house. As the officers entered they were immediately told that Francisco had a knife. It is therefore objectively reasonable for the officers to have believed that Francisco was in fact armed with a knife, much like the officer in the Foster case.

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Family members and neighbors confirmed that the officers gave Francisco repeated demands to end the situation. He failed to comply. The officers were in uniform and clearly made their presence known, so any failure to comply on Francisco's part was a volitional act. Officer Peterson attempted to use his ECD, Taser, but it failed to bring Francisco into compliance.

Once Francisco reached to his waistband and pulled out a shiny metal object he left the officers with no other option. Officer Peterson said that Officer Lamantia and Officer Laxton were in fear for their safety and the safety of the family members who were around Francisco when he (Francisco) pulled the item from his waistband. Officer Peterson said he, too, would have fired his gun because he was in fear for his own safety, but he could not use his gun because he was trying to maintain control of his K9.

The number of shots fired by Officer Lamantia and Officer Laxton was limited to an initial volley and ceased when Francisco fell to the ground. This amount of force was justified by Penal Code §196, and the other authorities cited above.

CONCLUSION

The evidence leads me to the conclusion that Officer Lamantia, Officer Laxton and Officer Peterson all acted in self-defense and the defense of others. The use of an ECD by Officer Peterson was objectively reasonable under the facts known to him at the time. The shooting by Officer Lamantia and Officer Laxton was objectively reasonable and justified under the facts known to them (singularly

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and collectively) at the time of the shooting. It is, therefore, this office's determination that the shooting of Francisco Moran was justified under the provisions of California law and this matter is now closed.

Very truly yours,

BIRGIT FLADAGER
District Attorney

David P. Harris
Chief Deputy District Attorney

cc: Officer Joseph Lamantia
Officer Robert Laxton
Officer Bradley Peterson