



# Office of the District Attorney Stanislaus County

**Birgit Fladager**  
District Attorney

**Assistant District Attorney**  
David P. Harris

**Chief Deputies**  
Annette Rees  
Marlisa Ferreira  
Stephen R. Robinson  
Jeffrey M. Laugero  
Jeff Mangar

**Bureau of Investigation**  
Chief Terry L. Seese

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## PRESS RELEASE

### **For Immediate Release**

Date: April 30, 2020

Re: Shooting by Officers Found to be Justified

### **For More Information Contact:**

John Goold, Public Information Liaison

Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence gathered during the investigation of the officer-involved shooting that occurred on July 17, 2019, the shooting has been determined to be justified.

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

# # #



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April 28, 2020

Sheriff Jeff Dirkse  
Stanislaus County Sheriff's Office  
250 E. Hackett Rd.  
Modesto, CA 95358

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

Re: Shooting of Stephen Murray

Dear Sheriff Dirkse and Chief Carroll:

On July 17, 2019, Stephen Murray (DOB 1/1/1967) was shot during a hostage incident. Both the Modesto Police Department and the Sheriff's Department have submitted investigation reports to the District Attorney's Office for review (under MPD case #MP19-020680 and SO case #SP19-033944). Based upon a review of the submitted reports, witness statements, audio and video evidence, it is our conclusion that the use of force by the deputies in the Sheriff's SWAT Team was legally justified. To explain this finding, I begin with a brief summary of the known facts:

**FACTS**

On July 16, 2019 deputy sheriffs were dispatched to Normandy Drive in an attempt to locate a stolen vehicle. The suspect reportedly associated with the vehicle was identified as Stephen Murray. Neighbors provided the deputies with Murray's address and the deputies went and knocked on his door. A voice from inside yelled "come get me. I'm not coming out, someone's going to die today...you'd better not come in here, I have a hostage."

Office: 832 12th Street, Suite 300 Modesto, CA 95354 Mailing: PO BOX 442 Modesto, CA 95353  
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A decision was made to have the deputies back off so as to not provoke the suspect. A hostage negotiator attempted to contact Murray by cellphone. The negotiator talked to the hostage (Murray's wife) and established she was okay and confirmed that Murray had a gun. Murray made threats stating, "don't think just because she is my wife that I won't kill her." During the time the deputies backed off, Murray was able to leave with his wife in the stolen vehicle.

Negotiations continued with Murray and the hostage over the phone for several hours into July 17<sup>th</sup>. During this time, the stolen vehicle was tracked and Murray was followed. Law enforcement was able to remotely disable the vehicle and Murray left on foot with his hostage. A SWAT team then determined it was necessary to rescue the hostage.

As the SWAT team approached, Murray grabbed the hostage by the neck and started backing up. Murray produced his gun and pointed it at the approaching deputies. He threatened to "blow her brains out" and started to place the gun against the hostage's head. As trained, the deputies moved rapidly towards Murray to close the gap and then shot him to prevent him from shooting the hostage.

Pursuant to the county-wide shooting protocol an investigation into the shooting was commenced. The hostage stated when interviewed she was relieved the event was over and believed that Murray was going to kill her. She said she was "grateful to be alive." Body-worn camera video confirmed that Murray had a gun and pointed it at the deputies. The gun was later determined to be a realistic replica of a semi-automatic handgun. (See photo.) Neither the hostage nor the deputies could tell the gun was not real.



## LAW

Any application of deadly force is unlawful unless it is either justified or excused. The use of force by a peace officer is governed by the Fourth Amendment. As the U.S. Supreme Court has said:

“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

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hindsight.... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,’ [citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.”

Graham v. Connor, (1989) 490 U.S. 386, at p. 396-397.

Peace officers have rights by virtue of their need to enforce the laws that differ from the ordinary citizen. An obvious example would be in a situation involving a hostage. One court in reviewing a hostage situation has stated:

“Where potential danger, emergency conditions, or other exigent circumstances exist, ‘ “[t]he Supreme Court's definition of reasonableness is ... ‘comparatively generous to the police....’ ” [Citation.]’ [Citation.] ‘ “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....’ [Citation.]” ’ [Citation.] 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.’ [Citations.]” [Citation.]’ [Citation.] ‘ “Thus, ‘an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.’ ” ’ ” (Brown, supra, 171 Cal.App.4th at p. 528, 89 Cal.Rptr.3d 801, citations omitted.)”

Lopez v. City of Los Angeles, (2011) 196 Cal. App. 4th 675, 686

The reasonableness standard mentioned in Lopez is the same standard required under the doctrine of self-defense/defense of others, and as said by another court:

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

People v. Jackson, (1965) 233 Cal. App. 2d 639, 642.

## CONCLUSION

Based on the law, Det. Corder, Det. Dias, Det. Harris and Det. Hutsell were performing their jobs as members of the Sheriff's SWAT team. By the time of the shooting, the SWAT team was aware that Murray was armed, was holding a hostage, was a convicted felon and had a warrant for his arrest. Murray started with a non-violent felony (vehicle theft),

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but chose to escalate into a violent and dangerous felony offense by taking his wife as a hostage at gunpoint. The SWAT team knew that Murray had a gun (being told by the hostage and being observed with the gun by surveilling officers). It was, therefore, reasonable to believe that Murray was "armed" even if the gun turned out to be a replica. It was imminently reasonable for a well-trained SWAT deputy to believe he had probable cause under these circumstances to stop Murray from shooting his hostage. We conclude this shooting was justified.

Very truly yours,

BIRGIT FLADAGER  
District Attorney



David P. Harris  
Assistant District Attorney

cc: Det. David Corder, Jr.  
Det. Brock Dias  
Det. Phillip Harris  
Det. Daniel Hutsell