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# **REPORT ON THE MARCH 15, 2013 SHOOTING OF ANGELO MORENO**

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**September 20, 2013**

## I. INTRODUCTION

On March 15, 2013, Napa County Sheriff's Department deputies were on routine patrol as American Canyon Police Department Officers in the City of American Canyon. At 10:03 pm, Deputy Kenneth Van Dyke spotted a small white pickup truck with no rear license plate at the intersection of Flosden Road and Via Bellagio. Deputy Van Dyke attempted to initiate a traffic stop but the driver, Angelo Moreno, refused to pull over and a pursuit ensued. Deputy Cullen Dodd joined the chase in his patrol car. Moreno drove the truck into the dead end construction zone of Newell Road and became stuck on an embankment. Sgt. Mike Hunter and Deputy Bryan Schultz arrived on scene shortly thereafter. Concerned that Moreno was consuming methamphetamine by ingesting it, Sgt. Hunter approached the truck and broke the driver side window. The other three deputies positioned themselves around the cab of the truck. Moreno gripped what appeared to be a semi-automatic handgun and aimed it at Sgt. Hunter. At that moment, all four law enforcement officers believed that one of the deputies would be shot and possibly killed. Sgt. Hunter yelled "gun" and all four deputies fired their weapons at Moreno, striking him multiple times causing his death. It was subsequently discovered that the "handgun" was actually a stainless steel multi-purpose tool that had been manipulated into the shape of a handgun and thereby appeared to be a handgun. (See Attachment "A" and "B")

The American Canyon Police Department invoked the Napa County Law Officer-Involved Fatal Incident Protocol. This protocol sets forth the procedures and guidelines to be used by Napa County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Members of the Napa County Sheriff's Department assumed primary responsibility for the investigation of this shooting incident. Detective Todd Hancock was tasked with leading the investigation. He presented a comprehensive report to the Napa County District Attorney's Office. Members of the Napa County District Attorney's Office were also assigned to participate in the investigation.

The role of the Napa County District Attorney's Office in a law enforcement employee-involved shooting is to review the investigation to determine if there exists any criminal liability on the part of the law enforcement employee; provide assistance to the investigating agency regarding legal issues; supplement the investigation when necessary; and, when appropriate, prosecute any persons believed to have violated criminal law.

Once the investigation is complete, the District Attorney completes a thorough review of the investigation and prepares a report summarizing the investigation and documenting the legal conclusions. This review incorporates forensic testing by several agencies that was necessary prior to reaching any conclusions.

Accordingly, this report includes a summary of facts surrounding the shooting of Angelo Moreno, statement of the applicable law, legal analysis, specific conclusions, and relevant

exhibits. This report relies heavily on the police investigation, interviews, evidence, case law, forensic science, and forensic testing to support its conclusions.

## **II. SCOPE OF REVIEW**

The sole purpose of this review is to establish the presence or absence of any criminal liability on the part of the involved law enforcement employee.

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

## **III. STANDARD OF REVIEW**

The District Attorney, as the chief law enforcement official of Napa County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function, i.e. to charge a person with a crime, is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is accurately expressed in a publication of the California District Attorneys Association, entitled, *Uniform Crime Charging Standards*. It provides:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government service (the definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause.

Simply put, the standard for charging a crime is high because the burden of proof required at trial is quite high, i.e. proof beyond a reasonable doubt, the highest burden of proof under the law.

#### **IV. SUMMARY OF FACTS**

##### **A. INTRODUCTION**

On March 15, 2013, Angelo Moreno (hereinafter "Moreno") visited his mother's house in Rodeo from 7:00 am to 12:00 pm where he ate breakfast and did his laundry. At approximately 2:00 pm, Moreno stole a white Mazda pickup truck from outside the home of its owner in Rodeo. At 10:03 pm, American Canyon Police Department Officer and Napa Sheriff's Department Deputy Kenneth Van Dyke (hereinafter "Deputy Van Dyke") spotted Moreno driving the pickup truck with no rear license plate in the City of American Canyon. Deciding to investigate, he began to initiate a traffic stop by activating his red emergency lights and white spot light. Moreno failed to pull over, choosing instead to speed away, and a pursuit ensued.

Deputy Van Dyke activated his siren, notified dispatch and followed in pursuit of the pickup truck which ran a red light and reached a maximum speed of 70 mph. Deputy Cullen Dodd (hereinafter "Deputy Dodd") joined the pursuit that lasted a total of 1.7 miles. It concluded at the dead end of a construction site when the truck became stuck in a dirt embankment. Deputies Van Dyke and Dodd stopped their patrol cars and initially approached the truck, yelling "put your hands up" and "show us your hands". Moreno ignored the commands and moved continuously inside the passenger compartment. It appeared to Deputy Dodd that Moreno was manipulating something or trying to open a bag. Deputies Van Dyke and Dodd became concerned he may be armed and backed up. Deputy Van Dyke saw Moreno look over his left shoulder and then over his right shoulder as if he was locating them and possibly targeting them. Sgt. Mike Hunter (hereinafter "Sgt. Hunter") and Deputy Bryan Schultz (hereinafter "Deputy Schultz") arrived to assist.

Sgt. Hunter drew his weapon and approached the driver's side window. It appeared that Moreno was using a glass smoking pipe to inhale narcotics as well as attempting to swallow the narcotics whole. Sgt. Hunter tried unsuccessfully to open the door, so he broke the window with his flashlight. Deputy Van Dyke was positioned behind Sgt. Hunter adjacent to the driver's side window. Moreno kicked out at Deputy Van Dyke, striking him in the forehead. Moreno continued to move, ignoring commands to "don't move", and twisted to his right and reached down toward the passenger seat or floorboard area. Moreno grabbed what appeared to be a semi-automatic handgun with his right hand and brought it up near his ear, pointing it at Sgt. Hunter. It was later discovered that the "handgun" was actually a stainless steel multi-

purpose tool (See Attachment A). However, because of the size, color, situation, and the way in which Moreno gripped the multi-tool, Sgt. Hunter believed that it was a silver colored handgun and he was about to be shot by Moreno. Sgt. Hunter shouted “gun” to the other officers and began to fire his own handgun at Moreno.

The other officers also believed that Moreno had a gun and was going to shoot it at Sgt. Hunter or another officer. Deputy Van Dyke, positioned adjacent to the driver’s side door, closed his eyes momentarily when he was kicked in the forehead. When he opened his eyes, Deputy Van Dyke saw a silver object in Moreno’s right hand. Deputy Van Dyke believed it was a gun, and when Moreno aimed it at him, he believed he was about to be shot. He heard “gun” and fired his own handgun at Moreno. Deputy Dodd, positioned behind the driver’s side door, saw Moreno begin to raise his shoulders and bring his arms up as if he was about to shoot a gun. He saw Sgt. Hunter tighten up and heard him yell “He’s got a gun”. Deputy Dodd believed Moreno was about to shoot Sgt. Hunter, so he crouched down and fired his handgun at Moreno. Deputy Schultz, positioned on the passenger side of the truck, observed Moreno reach down and bring his right hand up with a silver metal object and aim it where his fellow officers were located. He believed the object was a gun and fired his own handgun at Moreno at the same time someone yelled “gun”.

Each of the officers fired their handgun at Moreno and numerous bullets struck his body, killing him instantly. Dispatched was immediately notified, medical personnel were called, detectives were called out and a crime scene was set up. The Napa County Major Crimes Task Force initiated an investigation pursuant to Napa County Law Officer-Involved Fatal Incident Protocol.

## **B. CRIME SCENE AND WITNESS INTERVIEWS**

The neighborhood was canvassed for witnesses. Some witnesses reported hearing sirens, tires screeching, yelling and talking. Others saw a white truck being chased by two police cars with lights and sirens. The witnesses that did hear “popping” or “cracking” of the gunshots made low estimations of the number of shots (5 or more, at least 6, 4-5, 6-8, 6-7). Despite the residential location and search for eyewitnesses, none of the neighbors saw the altercation once the cars stopped at the scene.

Moreno’s mother was interviewed. She stated that Moreno was homeless, slept in public places in the city of Rodeo, had no car, and no cell phone. He was addicted to methamphetamine. On the morning of his death, he arrived at her home at 7:00 am. Moreno washed his clothes and ate breakfast with his mother. He left her home on foot at approximately 12:00 pm. She did not believe he was under the influence of methamphetamine at that time.

Moreno's ex-wife was interviewed. She stated that Moreno had a big drug problem and began using methamphetamine at age 11. When he was under the influence of drugs, he was "very paranoid", "acted sketchy", and "thought people were watching him". Specifically, he was paranoid "the cops were watching him". Asked about his behavior around law enforcement, she said that he lied about who he was to the police and would always run from them. She did not know Moreno to carry firearms, but typically carried a "big pocket knife" in his front pocket.

The owner of the truck Moreno was driving was interviewed. He confirmed that the white 1991 Mazda B2200 pickup truck was his. The truck was in poor condition, had no license plates, the doors were difficult to open, and the truck could be started without the ignition key. On the date of the incident, he arrived at his home in the city of Rodeo from work at approximately 2:00 pm. After being inside his apartment for 45 minutes, he returned outside and found his truck was gone. He attempted to report the truck stolen, but was unable to do so without paperwork that was inside the vehicle. He kept a silver metal Gerber multi-tool in the glove box, along with a tire gauge. He further stated that he was not acquainted with Moreno and did not give Moreno permission to drive his truck.

There were no audio or video recordings of the incident. Napa County Sheriff's Department Sgt. Joseph Jones arrived at the scene and checked each patrol car for an in-car camera system for potential evidence. One unit was not equipped with an in-car system. One unit had technical problems and the digital video recorder was full, preventing any recordings from being saved to the internal media. The other two units were functioning but the DVR space was full, preventing the altercation with Moreno from being recorded. Sgt. Jones confirmed the lack of recordings by off-loading all available audio and video at the American Canyon Police Department.

The autopsy of Moreno was conducted on March 18, 2013 at the Coroner Division of the Napa County Sheriff-Coroner by Chief Forensic Pathologist Joseph I. Cohen, M.D. In his autopsy report, Dr. Cohen states the cause of death as "multiple gunshot wounds". Nineteen bullets struck Moreno's body in many different areas, including head, chest, back, shoulder, arms and legs.

The police dispatch log begins at 22:03:45 with Deputy Van Dyke advising that there is a white Mazda with no plates and immediately changes his location from Via/Via to Via Belagio/Via Lamorra AMC. Two seconds later, he updates dispatch of the failure to yield. Updates follow from Deputy Van Dyke and Deputy Dodd that are not time coded by the dispatcher. With regard to Moreno's driving, the dispatcher notes speeds of 56 mph, 60 mph, 70 mph, and "23103" (reckless driving). In the construction area, the dispatcher reports the truck "trying turn around", traffic collision, "shots fired" and "start medical". At 22:07:00,

event type was changed from traffic stop to medic call. The total time for the event is less than four minutes.

### **C. DEPUTY VAN DYKE INTERVIEW**

On March 18, 2013, Deputy Van Dyke agreed to submit to an interview at the Napa County Sheriff's Department. Napa County Sheriff's Department Detective Ricky Greenberg (hereinafter "Detective Greenberg") conducted the questioning. Deputy Sheriffs' Association attorney Daniel Thompson was present. The interview was videotaped.

Deputy Van Dyke stated he was employed by the Napa County Sheriff's Department for approximately 2 years. As a deputy, he is assigned to the patrol division in the City of American Canyon. He is also a member of the SWAT team. This is the first time he used his firearm during a critical incident.

On the day of the incident, he was on routine patrol driving southbound on Flosden Road near the intersection of Via Bellagio in the City of American Canyon. Inside his patrol car was his wife who was on a ride along. He noticed a small white pickup truck with no rear license plate in front of his patrol vehicle. The truck turned left on to Via Bellagio and he initiated a traffic stop with his emergency lights and advised dispatch. Deputy Van Dyke saw one male occupant in the truck, Moreno. He observed Moreno lean down towards his seat and put something in his mouth. After he turned on his spot light, the truck slowed down as if it was going to pull over and then suddenly took off at a high rate of speed. Deputy Van Dyke advised dispatch of the failure to yield and a pursuit ensued.

Despite his lights and sirens, the truck turned northbound on to Flosden Road and ran a red light at the intersection of American Canyon Road. As Deputy Dodd joined the pursuit, he could see Moreno's arms and body moving all around the inside of the truck. The truck continued from Flosden Road on to Newell Road before it reached a construction site. The truck stopped on a small hill and he exited his patrol car. In response to Moreno who was moving all over the inside of the vehicle, Deputy Van Dyke screamed "put your hands up, put your hands up mother fucker". Moreno ignored the commands.

Deputy Van Dyke and Deputy Dodd moved backwards away from the truck. Deputy Van Dyke observed Moreno look over his left shoulder and right shoulder as if he had a weapon and was looking to target them. Deputy Van Dyke became concerned and told his wife to hide behind Deputy Dodd's patrol car for safety. Sgt. Hunter, who arrived on scene and positioned himself at the driver side of the truck, yelled "he is eating dope, he is eating dope". Deputy Van Dyke stood slightly behind the driver side door as Sgt. Hunter broke the window with his

flashlight. Sgt. Hunter attempted unsuccessfully to open the driver side door with his firearm drawn.

Deputy Van Dyke saw Moreno lean onto his back, facing Sgt. Hunter and himself, with a glass methamphetamine pipe in his mouth and nothing in his hands. Moreno kicked upwards with his left foot and struck Deputy Van Dyke in the forehead as glass struck his face. He closed his eyes briefly so glass would not get in his eyes. He opened his eyes and saw a silver metal object gripped in Moreno's right hand. Moreno was lying on his back with his head towards the passenger side of the vehicle. As Moreno raised his body, he pointed the object at Deputy Van Dyke. Believing that the metal object was a gun, he thought he was going to get shot. Deputy Van Dyke stepped to his right to avoid getting shot in the face and heard another deputy yell "gun". At this moment, Deputy Van Dyke thought he or one of his partners was going to die. Deputy Van Dyke located Moreno from the back window of the truck and fired his weapon. Deputy Van Dyke emptied an entire magazine and reloaded. This all happened in a couple seconds.

Deputy Dodd advised dispatch that shots were fired and medical personnel was called. Deputy Van Dyke did not take any photographs, videos or evidence. Deputy Van Dyke did not discuss the incident with the other deputies besides ensuring that they were not injured. Deputy Van Dyke sustained a minor injury to the right side of his forehead.

#### **D. SGT. HUNTER INTERVIEW**

On March 18, 2013, Sgt. Hunter agreed to submit to an interview at the Napa County Sheriff's Department. Detective Greenberg conducted the questioning. Deputy Sheriffs' Association attorney Daniel Thompson was present. The interview was videotaped.

Sgt. Hunter stated he was employed by the Napa County Sheriff's Department for approximately 17 years and received training in the use of force. As sergeant, he is assigned to supervise a patrol shift in the City of American Canyon. In his career, Sgt. Hunter was assigned to Patrol, Court Security, Investigations, Napa Special Investigations Bureau, Marine Patrol, and was a SWAT team member. This is the first time he used his firearm during a critical incident.

On the day of the incident, he was on routine patrol when he heard over the radio that Deputy Van Dyke made a traffic stop, but the vehicle failed to yield. Deputy Van Dyke advised Sgt. Hunter that the vehicle ran a red light in the city of American Canyon, was travelling 70 mph and was in the construction site at the end of Newell Road trying to turn around. Sgt. Hunter arrived at the scene quickly and observed two patrol vehicles behind a small white truck that was stuck in a big ditch.



Sgt. Hunter saw Deputy Van Dyke and Deputy Dodd walking backwards away from the truck, while they continued to face forward. Sgt. Hunter could see a solo male occupant, Moreno, inside the truck leaning over and moving around. Moreno ignored commands to show them his hands. Sgt. Hunter directed Deputy Dodd to get his K-9 and Sgt. Hunter advanced toward the truck to get a better view of the occupant. Sgt. Hunter was concerned that Moreno might try to harm himself or open the door. With a better vantage point, it appeared to Sgt. Hunter that Moreno was smoking methamphetamine out of a glass pipe and eating narcotics. He was concerned for the occupant's safety and that he was destroying evidence. Moreno ignored his commands to "get your hands up, get your hands up".

Sgt. Hunter advanced to driver's side door because he was still concerned Moreno might try to harm himself or open the door. Sgt. Hunter tried to open the car door, but was unsuccessful because the door handle was missing. Sgt. Hunter struck the window with his flashlight three times until it shattered and broke. Moreno continued to move around, ignoring Sgt. Hunter's new commands to "don't move, don't move". Moreno twisted his body to the right, reached down and grabbed what appeared to be a compact silver handgun. Moreno came up with the "handgun" and looked like he racked it (reaching over the top with his left hand) in a way that is common to load a round into a chamber of a semi-automatic handgun. When the occupant turned towards him, Sgt. Hunter yelled "gun", backed up and fired one shot from his duty firearm towards Moreno. At this point in time, Sgt. Hunter felt there was an imminent threat of great bodily harm or death to himself and to his fellow officers. Sgt. Hunter "was absolutely convinced he was going to at least get one shot off and [he] was going to get shot." As the event unfolded, Sgt. Hunter was aware of the close proximity to schools and residences.

Cognizant of another deputy on the other side of truck, and in order to get a better angle, Sgt. Hunter moved forward to the driver's side and continued firing his weapon. Pursuant to his training, Sgt. Hunter aimed for Moreno's face when Moreno initially continued to move despite being fired upon. When Sgt. Hunter felt the threat was over, he stopped firing. He did not remember making the decision to shoot because it was over in two seconds. Sgt. Hunter thought he shot four times, but realized when he holstered his weapon that he shot nine times. Sgt. Hunter looked inside the truck and the occupant appeared to be deceased. Medical personnel and Investigations Division were notified immediately. Sgt. Hunter did not touch the truck or go inside of it.

## **E. DEPUTY DODD INTERVIEW**

On March 18, 2013, Deputy Dodd agreed to submit to an interview at the Napa County Sheriff's Department. Detective Greenberg conducted the questioning. Deputy Sheriffs' Association attorney Daniel Thompson was present. The interview was videotaped.

Deputy Dodd stated he was employed by the Napa County Sheriff's Department for approximately 11 years. As a deputy, he is assigned to a patrol shift in the City of American Canyon. Deputy Dodd is a K-9 officer, team leader for SWAT Team, and an instructor for the Defensive Tactics Team. His K-9 is trained in both handler protection and sniffing narcotics. Handler protection includes tracking, searching buildings and vehicles, and apprehending suspects. He served five years in the United States Marine Corp in the Infantry Division. This is the first time he used his firearm during a critical incident.

On the day of the incident, Deputy Dodd was on routine patrol when he heard Deputy Van Dyke call out a car stop via police radio. As Deputy Dodd headed that direction, Deputy Van Dyke updated that the driver failed to yield. At the corner of Via Bellagio and Flosden Road, Deputy Dodd observed a small white truck followed by Deputy Van Dyke's patrol car. Deputy Dodd followed the white truck from Flosden Road to Newell Road, running a red light and reaching a top speed of 70 mph. At the dead end of Newell Road, the white truck was stuck on a small embankment of a construction site.

Deputy Dodd and Deputy Van Dyke exited their vehicles and repeatedly commanded the male occupant, Moreno, to "show us your hands". Deputy Dodd observed Moreno moving around and manipulating something inside the truck, possibly trying to open a bag. Because Moreno was not listening, Deputy Dodd told Deputy Van Dyke "back up, back up". They began backing up when Sgt. Hunter arrived on scene. Prompted by Sgt. Hunter, Deputy Dodd returned to his vehicle to get his K-9. Deputy Dodd saw a woman running towards him and initially thought she had fled the white truck, but was told that it was Deputy Van Dyke's wife. Deputy Dodd grabbed the K-9 dog leash, but dropped it because of the uneven ground. The K-9 keyed in on Deputy Van Dyke and then Sgt. Hunter because they were yelling at Moreno inside the truck. Deputy Dodd ran up towards the truck to gain control of his K-9.

Deputy Dodd saw Sgt. Hunter parallel to the driver side door with the window broken out. Sgt. Hunter suddenly tightened up, became really focused, stopped talking and yelled "he's got a gun". Deputy Dodd saw Moreno turn his body and seemed as if he was bringing up a gun to shoot. Deputy Dodd could not see Moreno's hands, but he had no doubt in his mind that Moreno had a gun. At this time, Deputy Dodd believed that Sgt. Hunter was going to be shot. From his vantage point, Deputy Dodd was looking up at the truck and could see Moreno's left shoulder and top of his head. Because Deputy Dodd believed that Sgt. Hunter's life was in danger, Deputy Dodd fired his weapon towards the driver's side door until Moreno left his sight. Deputy Dodd believed he shot 3-4 rounds, but knew that it was actually more.

Deputy Dodd walked up to the truck with the other deputies to check if Moreno was still a threat. Moreno was not moving, so Deputy Dodd announced shots fired on the radio and requested medical personnel. Deputy Dodd briefly checked with the other deputies as to their

well being and who discharged their weapons. Deputy Dodd did not take any photographs, video or seize any evidence.

## **F. DEPUTY SCHULTZ INTERVIEW**

On March 18, 2013, Deputy Schultz agreed to submit to an interview at the Napa County Sheriff's Department. Detective Greenberg conducted the questioning. Deputy Sheriffs' Association attorney Daniel Thompson was present. The interview was videotaped.

Deputy Schultz stated he was employed by the Napa County Sheriff's Department for approximately 17 years and received training in the use of force. As a senior deputy, he is assigned to a patrol shift in the City of American Canyon. In his career, Deputy Schultz was assigned to Patrol, Napa Special Investigations Bureau, SWAT, OHV and an evidence collection team member. He served five years in the United States Army as a crew chief on a helicopter. This is the first time he used his firearm during a critical incident.

On the day of the incident, Deputy Schultz was on routine patrol when he heard over the police radio that Deputy Van Dyke attempted to conduct a car stop, it failed to yield, and a pursuit ensued. Deputy Dodd advised that the vehicle crashed in the construction area at the dead end of Newell Road. Deputy Schultz responded to the scene as the fourth patrol vehicle. He saw a small white truck in an elevated position.

As Deputy Schultz raced up to the passenger side of the truck, he thought he saw a deputy strike the driver side window with his flashlight. Deputy Schultz heard a lot of verbal commands being yelled by a deputy. Deputy Schultz stopped at the passenger side window which was rolled up. Inside the truck, Deputy Schultz saw a man, Moreno, moving frantically with his body and hands moving in all directions. Deputy Schultz believed Moreno was high on a stimulant drug. Once the window broke, Moreno spun his body around, with his foot directed at the driver side door, and moved his hands near the transmission hump of the vehicle. Moreno brought his right hand up towards his ear, while gripping a shiny silver metal object in his right hand that Deputy Schultz recognized as a handgun. At this time, Deputy Schultz believed that the lives of the other deputies were in danger. Deputy Schultz did not believe that his own life was in danger.

Deputy Schultz began to pull the trigger on his firearm at the same time he heard another deputy yell "gun". Deputy Schultz fired two rounds. When the shooting stopped, Deputy Schultz could see Moreno's hands were free of any weapons. Deputy Schultz scanned the truck and saw no other weapons. The deputies checked to make sure no one was injured and they froze the scene until medical personnel arrived.

## G. PHYSICAL EVIDENCE

The crime scene was processed by Napa Sheriff's Department Evidence Specialist Krisha Lovitto, Deputy Larry Borgo, Sgt. Joe Jones and Napa Police Department Forensic Specialist Janet Lipsey. The truck was positioned in an upward direction stuck in the dirt embankment. The driver and passenger doors were closed and the door handles did not work. The plastic driver exterior door handle was broken off and found on the ground. The driver window was completely broken out and the passenger window was in an up position. A dark silver colored Gerber brand multi-tool in a partially opened condition was located directly to the right of Moreno on top of the seat in the truck. Other items of significance found inside the truck were a flat head screwdriver, small black flashlight, cigarettes, and one clear glass pipe. No drugs were found in the truck.

Lighting conditions were documented. The area of land was undeveloped with minimal to no lighting. The scene was east of a residential area that had some street pole lights that were dimly illuminating the residential area and streets west of the scene. The actual scene was partially illuminated by the patrol vehicle headlights and spotlights.

Blood samples were taken from the four officers and Moreno. The blood samples from the four officers tested negative for alcohol and drugs. The blood sample from Moreno was tested by Central Valley Toxicology on April 3, 2013. Director B.L. Posey utilized a complete drug screen and detected methamphetamine. Methamphetamine was measured at 1.4 mg/L (0.2 – 5 mg/L is potentially toxic) and amphetamine was measured at 0.36 mg/L (0.2 mg/L is potentially toxic).

The silver metal Gerber multi-tool was submitted to Cellmark Forensics for DNA testing. Buccal swabs from the truck owner and a blood sample from Moreno were submitted as reference samples. On April 26, 2013, DNA Analyst III Jill Cramer presented her results in a report. A DNA profile was obtained from global swabs collected from the multi-tool. The major profile was identified as originating from Moreno and the minor profile was consistent with originating from the truck owner. The estimated frequency of occurrence of this genetic profile at fifteen loci in five North American populations among unrelated individuals is 1 in 5.504 septillion for African Americans, 1 in 5.679 sextillion Caucasians, 1 in 32.35 sextillion Southwest Hispanics, 1 in 53.30 quintillion Southeast Hispanics, and 1 in 63.36 quintillion General Asians. This provides strong evidence that Moreno is the source of touch DNA detected on the multi-tool.

Some human dynamic factors should be considered when discussing the physical evidence. After the chase and upon Moreno's refusal to follow commands, the deputies were in a high state of emotional intensity. The incident took place at night in a poorly lit area

(although there was ambient lighting from headlights, spotlights and flashlights). Sgt. Hunter and Deputy Van Dyke's attention and vision was narrowly focused on the multi-tool held by Moreno. All four deputies had just seconds or less to react to the perceived danger and make a decision once Moreno grabbed the multi-tool. The way Moreno held the multi-tool, Moreno's hand manipulation of the device (the racking movement), the shape and color of the instrument, and the context or schema of the situation, led officers to quickly perceive the multi-tool as a semi-automatic handgun. The fact that 31 bullets were fired, but the witnesses and officers underestimated that number is explainable; four officers shot simultaneously and studies have shown that semiautomatic handguns, such as those carried by the officers in this matter, will shoot up to four (4) rounds per second. Finally, the rapidly unfolding event required time pressured decision making.

## **V. STATEMENT OF THE LAW**

The sole issue to be resolved in this review is whether the shooting of Angelo Moreno was lawful because the force used by Deputy Van Dyke, Deputy Dodd, Deputy Schultz and Sgt. Hunter was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose; or, alternatively, whether the shooting was unlawful because the force used by the four officers was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

Several key principles of law apply to the question posed by these legal facts.

A peace officer has the authority to make an arrest of an individual upon probable cause to believe a crime has been committed. An individual has a duty to submit to lawful arrest.

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 the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

A peace officer may detain an individual upon a reasonable suspicion that the person to be detained has engaged in criminal activity. The purpose for the detention is to allow the peace officer an opportunity to confirm or dispel the suspicion of criminal activity. The legal standard that applies to a lawful detention is somewhat less than what is required for an arrest. An individual has a duty to submit to a lawful detention.

A peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

Any person, including a peace officer, has a right to use reasonable force in self-defense or defense of others. A person can be said to have acted in lawful self-defense if all of the following exist:

- The person reasonably believed that person or someone else was in imminent danger of being killed or suffering great bodily injury;
- The person reasonably believed that the immediate use of deadly force was necessary to defend against that danger;
- The person used no more force than was reasonably necessary to defend against that danger.

When deciding whether the person's beliefs were reasonable, one must consider all the circumstances as they were known to and appeared to the person at the time and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

In a leading California Appellate decision, *People v. Aris* (1989) 215 Cal.App.3d 1178, 1188, the court defines what is meant by imminent harm as applied to the law of self-defense:

"The definition of imminence in California has long been well settled. 'A person whose life has been threatened by another, whom he knows or has reason to believe has armed himself with a deadly weapon for the avowed purpose of taking his life or inflicting a great personal injury upon him, may reasonably infer, when a hostile meeting occurs, that his adversary intends to carry threats into execution. The previous threats alone, however, unless coupled at the time with an apparent design then and there to carry them into effect, will not justify a deadly assault by the other party. There must be such a demonstration of an immediate intention to execute the threat as to induce a reasonable belief that the party threatened will lose his life or suffer serious bodily injury unless he immediately defends himself against the attack of his adversary. The philosophy of the law on this point is sufficiently plain. A previous threat alone, unaccompanied by any immediate demonstration of force at the time of the reencounter [*sic*], will not justify or excuse an assault, because it may be that the party making the threat has relented or abandoned his purpose, or his courage may have failed, or the threat may have been only idle gasconade, [*sic*] made without any purpose to execute it. On the other hand, if there be at the time

such demonstration of force ... [indicating] that his adversary was on the eve of executing the threat, and that his only means of escape from death or great bodily injury was immediately to defend himself against the impending danger..." (Citations omitted.)

## **VI. LEGAL ANALYSIS**

The paramount issue is whether each law enforcement officer acted in lawful self-defense or defense of another when he shot Moreno. It is reasonable to believe that Sgt. Hunter perceived that he was in imminent danger of being killed or suffering serious bodily injury when Moreno had the multi-tool in his hand. It is reasonable to believe that immediate use of his gun was necessary to defend against that danger. Sgt. Hunter believed he had no other options at that point. That belief was reasonable for several reasons. First, the multi-tool looked like a compact silver handgun. Second, the way Moreno held, and appeared to "rack", the multi-tool was similar to how a semi-automatic handgun is operated. Third, Sgt. Hunter was directly in the line of fire. Fourth, Sgt. Hunter yelled "gun" prior to firing his own weapon. Finally, the other deputies who saw the weapon in Moreno's possession also believed that the multi-tool was a handgun.

The other deputies also acted in self-defense or defense of another. Like Sgt. Hunter, all of the involved deputies believed that Moreno had a gun and that one of the law enforcement officers was about to be shot. Moreover, all three deputies heard Sgt. Hunter yell "gun" and this was a signal to them that Moreno had a handgun in his possession. Based on the circumstances of the stop, Moreno's refusal to follow commands, Moreno's constant movement in the truck, and Moreno's kicking of Deputy Van Dyke, it was reasonable for the deputies to believe that the use of the handgun was imminent and their only reasonable response was to shoot immediately. Each deputy present shot at Moreno until Moreno stopped moving and was no longer a perceived threat.

## **VII. CONCLUSION**

It is a well established community expectation that peace officers must respond when summoned at a time of crisis and not retreat in the face of adversity. While in the lawful performance of their duties, four law enforcement officers became involved in a highly unpredictable and rapidly evolving situation.

The implementation of deadly force was a reasonable and lawful response under the totality of the circumstances. Therefore, the actions of Deputy Van Dyke, Deputy Dodd, Deputy

Schultz and Sgt. Hunter were reasonable under the circumstances they faced, were legally justified, and criminal charges against them are neither warranted nor supported by the evidence.

The review detailed herein conducted within the scope and jurisdiction of the District Attorney is complete and final. This report and its conclusions have been given to the involved officers and to the Napa County Sheriff's Department. At this time, this report is being released to the media and made available to the public.

Respectfully,

A handwritten signature in black ink, appearing to read "Gary Lieberstein". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Gary Lieberstein, Napa County District Attorney



# Attachment "A"



## Attachment "B"

