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June 10, 2011

Sheriff Bill Brown
Santa Barbara County Sheriff's Department
4434 Calle Real
Santa Barbara, CA 93110

Re: *Kerry Flood, Officer Involved Shooting*

Dear Sheriff Brown:

I recently completed my review of the homicide of Kerry Flood, which occurred on April 23, 2011, in the Santa Maria area. I find that Sgt. Rob Wilkinson and Senior Deputy Marc Hammill utilized reasonable force in the deadly shooting of Kerry Flood.

Statement of Facts. (Compiled from the review of police reports, autopsy report, audio taped interviews of the deputies and key witnesses, presentation by detectives, 911 recordings and records, photographs and videos.)

At approximately 12:15 p.m., on April 23, 2011, the Santa Barbara County Sheriff's Department received a CHP cell phone transfer of a 911 call. The caller, Marcene Buck, told dispatch that there was an elderly male wearing only a towel yelling and screaming in the pool area of the mobile home complex. She said that he told her he was doing "scream therapy." She described him as yelling at an empty chair. She heard "blood curtailing [sic] screaming and yelling" and immediately thought someone was hurt or being attacked. She further described his behavior as psychotic. She was concerned because Flood was "acting inappropriately and there were kids there."

Senior Deputy Marc Hammill is a 14-year veteran police officer who spent five years in the department's training bureau and is a certified firearms instructor, a certified Taser instructor, a certified use of force instructor, including less lethal means of force and is a member of the department's SWAT team. Sergeant Rob Wilkinson is an 18-year veteran of the department, with the last 10 years being spent as a Sergeant in narcotics and patrol. He also spent five years as a member of the SWAT team.

At 12:21 p.m. Deputy Hammill was dispatched as the lead deputy with Sgt. Wilkinson as his backup officer. At 12:36 p.m. Hammill and Wilkinson arrived in separate marked Sheriff's Department vehicles at the same time and initially checked the pool area with no results. They received an update from dispatch that the subject went into a residence at 3923 Cherry Hill Road, so they proceeded toward the residence. They found

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Santa Maria, CA 93454
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that there is no such address, so they stopped in front of a house in that vicinity and got out of their cars. The Flood home and the house immediately to the north both had the garage doors open. Deputies saw four people outside the house to the north so they approached them to see if they knew what was going on.

Brenda Wooley told them that the person they were looking for was next door and his name is Kerry. She said that he was the son of the woman who owned the home and he had just gone inside. She said he was normally a nice guy, but that there was something wrong today. She also told them that she was not the person who called the police.

Hammill and Wilkinson, who were both wearing department issued marked uniforms, walked over to the Flood residence and noticed the garage door closing. The front door was open but the heavily meshed and iron screen door was closed, preventing them from seeing inside. They knocked on the screen door and rang the doorbell and received no response. They became concerned for their safety because someone could have been standing right inside the screen door without them knowing it. Wilkinson opened the screen door but remained outside and continued to announce "Sheriff's Department" and to call out Kerry's name; still with no response. Wilkinson could see a tall glass hutch against the far wall and noticed a female's reflection in the glass. The female, Barbara Flood, came around the corner and approached them.

Wilkinson told her that they were here to see if Kerry was alright. He said that Kerry was not in any trouble but they needed to talk to him to see if things were okay. Wilkinson described Ms. Barbara Flood as having a "bewildered" look on her face as she hesitated before telling them that Flood had gone to an AA meeting. Wilkinson felt like she was hiding something due to her body language and hesitation in answering, and he knew that the neighbor just saw Flood enter the house. Wilkinson now noticed a reflection in the same glass hutch, but this time it was of a male darting back and forth. He could see that the male was walking away from the front door towards the back of the residence, so he told Hammill to go around the back. Shortly thereafter, Wilkinson could see the male reflection again and this time Flood was coming towards the front door.

Flood rounded the corner into the front room holding a 12" x 12" concrete paver that was 1½ inches thick. He was yelling and cussing as he held the concrete paver and quickly approached Wilkinson and Ms. Flood. Wilkinson took out his Taser but held it down by his side and yelled for "Marc" (Hammill). Flood continued his approach as he screamed that they needed a warrant and to get out. Wilkinson said he was in fear at that point and thought about transitioning to his handgun but he knew he didn't have time. He stepped just inside the doorway next to Ms. Flood so he could better protect her. Wilkinson ordered Flood to stop and raised the Taser which caused Flood to stop about five feet from Wilkinson. Ms. Flood stepped in between Flood and Wilkinson, begging Flood to stop and relax. Wilkinson pointed his Taser at Flood, but Flood kept using the concrete paver as a block to the Taser's aim. Wilkinson said he became scared when he looked into Flood's eyes. He said Flood had a "bizarre look in his eyes, like being out there, that he meant business and was not going to reason."

Hammill entered the house through the back door when he heard Wilkinson calling out for him by his first name. Hammill said Wilkinson is the most "laid back" sergeant he has worked for and he has never heard Wilkinson either call him by his first name in this type of situation or call out audibly to him instead of using the radio. Hammill said that he could tell by the tone of Wilkinson's voice that something was wrong so he immediately entered the house to see what was going on. As he entered, Hammill could hear Flood yelling and screaming but could not hear what Flood was saying. Hammill came up behind Flood. He saw Flood raise the concrete paver up as if he was going to use it to strike Wilkinson.

Hammill deployed his Taser toward Flood's back, but the Taser barbs hooked into Flood's loose fitting robe and had no effect. Flood immediately turned around and ran directly at Hammill with the concrete paver over his head. This action caused Wilkinson to fire his Taser into Flood's back, but it also had no effect for the same reason. Flood hit Hammill with the concrete paver on Hammill's raised right forearm and on the top of Hammill's head as they both crashed into the dining room table. Hammill felt momentarily dizzy but was able to maintain his balance before he and Flood went to the floor, followed by Wilkinson. Flood was actively combative, striking both officers with his fists and actively fighting them off. Hammill described Flood as the most actively combative individual he has encountered in his 14 years as a law enforcement officer. Wilkinson believed that Flood had a piece of concrete paver still in his hand while he was fighting the deputies. Flood reached up and ripped Wilkinson's badge off of his uniform during the fight. Hammill and Wilkinson struck Flood several times in the face with closed fists with no effect on Flood. Wilkinson picked his Taser up off the ground and attempted to "drive stun" Flood in the neck with his Taser, again with no effect. At this point Hammill got up and backed up so he could regroup as they were unable to gain control of Flood.

Hammill said he knew they needed to try a different tactic and he was going to either try the Taser again or switch to a baton, so he told Wilkinson to "break." Wilkinson started to back off when he heard Hammill say, "Clear." Wilkinson described Flood as getting up more quickly than anyone he has ever seen, "like he was spring loaded." Flood ran directly toward Hammill. He picked up a wooden kitchen chair on the way. Hammill had blood streaming down his face from the 2-inch laceration on the top of his head resulting from Flood hitting him with the concrete paver. As Flood raised the chair over Flood's shoulder, Hammill had just enough time to look and make sure Wilkinson and Ms. Flood were not in the line of fire. Hammill had been hit over the head already. When he saw Flood running at him with the chair he feared for his life. Wilkinson immediately reached for his gun when he saw Flood running at Hammill with the chair, but before Wilkinson could get his gun out of the holster the incident was over. Hammill took out his firearm and fired at Flood four times, causing Flood to fall to the ground at Hammill's feet.

Wilkinson noticed the blood all over Hammill's face and initially thought it was Flood's blood. When he realized Hammill was injured, he grabbed some napkins from the kitchen and began applying pressure to the wound. At 12:44 p.m. Wilkinson put out over the radio, "shots fired, subject down, medics needed, one officer injured." At 12:47 p.m. medics arrived on scene and began attending to Flood. Hammill was taken to the emergency room where he received six staples, was diagnosed with a concussion, and had significant

swelling to his right forearm. Flood was pronounced dead on scene by medics. He was still holding Wilkinson's badge in his hand.

Evidence at the Scene

SBSO forensics located the chair that Flood was holding when he rushed Hammill. They found a bullet strike mark on the chair and an expended round in that area of the house. This evidence is consistent with the autopsy findings discussed below. They found two more expended rounds inside the corner of the couch in the living room. This is consistent with the trajectory described by Hammill. They found the concrete paver by the dining room table and a broken piece of the paver close to where the physical struggle occurred. They found the location where Flood fell to be consistent with the description given by the deputies. Flood's robe had multiple holes in it as if the bullets passed through folds in the robe.

Autopsy

The pathologist found two entry wounds and one exit wound. The first round entered Flood's left side traveling just under the skin and exiting at his sternum. The path of that round is consistent with going through his body and then striking the chair that Flood was holding up and over his right shoulder. The second round entered on his left side above the nipple, striking the heart, lung, spinal cord and lodging in the spinal column. The second round would have caused a quick death and medical intervention could not have saved his life. They found marks on his right hand consistent with holding Wilkinson's badge. They also found a cut on his left hand that could be consistent with the concrete paver. The toxicology results for Flood were positive for nicotine, caffeine and marijuana.

Relevant Civilian Witnesses

Barbara Flood

Barbara Flood described her son at the time deputies arrived as "looking like someone on TV on LSD; he looked wild." She said that, "I don't know what else they (deputies) could have done because he wasn't going down and he wasn't listening to me." She said, "I thought he had snapped...he was just wild eyed...I'm not blaming the officers."

Ms. Barbara Flood said Flood was diagnosed with paranoid schizophrenia when he was 19 years old and was discharged from the Navy at that time. She did not know of any medications he was taking and did not believe he had been receiving any mental health treatment since he was 19. She said he seemed normal when he arrived at her house that morning and he told her that he was going to take a swim. She said she could tell something was different after he came back from the pool. She said he walked out in just a towel

which was extremely unusual for him because he was very modest. She said he asked her if there is still freedom of speech in this county and she told him there was. Ms. Flood said he went in the other room and she thought he was on the phone because he was talking to someone about dolphins and money. (His cell phone was later found in his car and he was not using the house phone.) When law enforcement arrived, she said Flood came back into the living room and told her, "Shh, I'm innocent. Tell them I went to AA."

She said she initially told the officers that Flood went to AA, but they did not believe her. She then described Flood entering the living room with the paver from her backyard in his hands. She said he was very angry and would not listen to reason by her or the officers. She said she heard Hammill use his Taser and saw Flood run and hit Hammill in the head with the paver. She thought she heard the Taser go off several times. She did not realize that Flood had been shot until officers told her that later on.

Brenda Wooley

Brenda Wooley was visiting next door that weekend. She is the one who told officers that Flood was the person they were looking for and he had just gone next door. Wooley was outside gardening when officers went to the Flood residence. She saw both deputies knock on the door between 3-5 minutes. She said the door opened and Wilkinson stepped in. At some point Hammill walked around back. She heard Flood yelling, "You can't come in without a warrant." She described Flood as screaming and very agitated. She said Wilkinson asked Flood to come outside so they could talk, but Flood responded by screaming at him about the need for a warrant. She heard scuffling and she heard a Taser go off twice. She said she heard more shuffling, a crash, four pops and Ms. Flood scream. She saw medics and more officers arrive and the officers come outside.

Basma Khalifa

Basma Khalifa lives in the San Clemente area and was in a dating relationship with Flood from December of 2009 through October of 2010. She and Flood remained friends after she ended their dating relationship and she recognized that Flood hoped they would eventually get back together. She never saw any signs of Flood's mental illness. She said Flood was stressed because his unemployment ran out and he could not find a job. She said he had been crying a lot the week before this incident. She also said he hated the police and often cried when he spoke about an incident where he claimed the highway patrol beat him up in San Bernardino. She also said that he had recently lost his dog which upset him. Her last contact with Flood was via text message on April 21st when she received numerous religiously based texts from Flood and she finally told him to stop bothering her.

Prior Law Enforcement Contact

Carbon Copy Sheriff in Utah

8/5/92 Arrest for Driving while Intoxicated

10/30/94 Arrest for Public Intoxication

7/28/06 Arrest for DUI, Failure to Yield and Obstructing and Resisting Arrest

California Highway Patrol in San Bernardino County

3/4/06 Arrest for Reckless Evading and Resisting

California Department of Fish and Game

10/25/08 Arrest/citation for outstanding warrant

California Highway Patrol in Santa Barbara County

4/23/11 at 9:20 a.m. Arrest/citation for speeding issued for 85 mph in a 65 mph zone

Applicable Law

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide, which are lawful.

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful.

Penal Code section 196(2) defines justifiable homicide by public officers. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.

Under California law, anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense, need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal. App. 2d 85, 95.

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Conner* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal. App. 4th 334.

In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Id.*, at 396.) Further the Court stated, "[t]he '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." (*Id.*, at 397.) Moreover, "[t]he 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." (*Id.*, at 397-398.)

...Thus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. 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." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham's* definition of reasonableness has been described as "comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present" (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police "... a fairly wide zone of protection in close cases...." *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

Summary

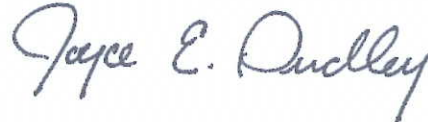
Deputies responded to the scene of a person (Flood) who was described by the reporting party, Marcene Buck, as yelling and screaming at an empty chair while wearing only a towel in the community pool area. Kerry Flood is described as having a "bizarre look in his eyes, like being out there, that he meant business and was not going to reason" by Wilkinson, and looking like someone on LSD by his mother, Barbara Flood. He approached Wilkinson, who was in full uniform, with a concrete paver in his hands, yelling and screaming. Wilkinson feared for his safety and the safety of Barbara Flood, so he stepped into the entryway of the home and called out for Marc (Hammill). Hammill entered the home from the back door and deployed his Taser into the back of Flood after Flood raised the concrete paver as if he was going to strike Wilkinson. Flood turned immediately on Hammill, causing Wilkinson to also deploy his Taser into the back of Flood, but neither Taser had an effect on him. Flood aggressively attacked Hammill, striking him on his right arm and the top of his head with the concrete paver, which caused a two-inch bleeding laceration to Hammill's head, a concussion and swelling to his arm.

Flood continued to punch and fight Hammill and Wilkinson when they were on the ground. Hammill and Wilkinson punched Flood several times with their fists in an attempt to gain control over him but their punches again seemed to have no effect on Flood. Wilkinson tried applying his "drive stun" gun to the left side of Flood's neck, still with no effect. Hammill realized that they were not going to be able to gain

control of Flood's hands in the ground battle so he stood up, planning to either switch to his baton or to redeploy his Taser. He yelled for Wilkinson to "break," which made Wilkinson start to stand up and back away. Flood is described as being "spring loaded" as he jumped to his feet, grabbed a wooden dining room chair and charged Hammill from about five feet away. Hammill had blood streaming down his face, had suffered a concussion from Flood striking him with the concrete paver, and now had Flood charging him with the dining room chair held over Flood's right shoulder, ready to strike Hammill. Hammill, fearing for his life, looked to make sure he had a clear shot. Hammill had time to get his gun out of the holster and fired four rounds from his hip, causing Flood to fall at his feet. Hammill, who is a certified firearms instructor, certified Taser instructor and certified less lethal force instructor, later described Flood as the most aggressive individual he ever dealt with during his 14-year career in law enforcement.

Given that a concrete paver and/or wooden dining chair can be a dangerous or deadly weapon which can inflict great bodily injury or death, I find that Senior Deputy Marc Hammill and Sergeant Rob Wilkinson used reasonable force based on the circumstances they were facing at that moment on April 23, 2011. I find that the deputies acted lawfully and Flood's resulting death was a justifiable homicide.

Very truly yours,

A handwritten signature in dark ink, reading "Joyce E. Dudley". The signature is written in a cursive, flowing style.

Joyce E. Dudley
District Attorney
County of Santa Barbara