Remarks by District Attorney Tony Rackauckas
Investigation Results and Filing Decision Regarding the Death of Kelly Thomas
September 21, 2011

Thank you all for coming.

During the pendency of this investigation, we have heard over and over again the word "justice." The public has been crying out for "justice for Kelly." In order to make sure that "justice" was done, the Orange County District Attorney's Office was entrusted with the task of investigating this case and getting to the truth.

Since July 7th, we have been in pursuit of the truth as to all of the facts and circumstances of what happened on July 5th at the Fullerton bus depot.

Our Office took this responsibility faithfully and seriously.

We executed the task thoroughly and efficiently.

In Orange County, we generally trust our law enforcement - and with good reason. I believe the law enforcement we have in Orange County is second to none. My office works every day with police officers from 26 agencies who are dedicated, hard-working, and make daily sacrifices to protect and serve their communities. We must do everything we can to make sure we protect that trust, including prosecuting police officers if they violate the law.

In our pursuit of the truth, the Orange County District Attorney's Office conducted a thorough investigation over the span of 11 weeks. You will get a full, extensive list of all evidence considered – among which includes:

* video tapes including those from two cell phones, the surveillance video from the Fullerton Transportation Center poll camera, and bus camera videos;
*151 witnesses;
*police reports written by all involved Fullerton Police Department personnel;
*medical reports;
*examination of physical evidence such as batons and Tasers; and
* the Coroner's report.

We also conducted all relevant legal research to determine the applicable law in this case.

After considering all of the evidence in this case and applying it to the law, I am charging Officer Manuel Ramos with one felony count of second degree murder and one felony count of involuntary manslaughter. If convicted, he faces a maximum sentence of 15 years to life in state prison.

Corporal Jay Cicinelli is charged with one felony count of involuntary manslaughter and one felony count of the use of excessive force. If convicted, he faces a maximum sentence of four years in state prison.

The biggest shame about this case is the fact that it could have been avoided. This never had to happen, and it never should have happened.

We are alleging the following facts to support the reasons for our charges: Ramos set in motion the events that led to the death of Kelly Thomas by committing an act that was dangerous to human life with conscious disregard for that life. His actions were reckless and created a high risk of death or great bodily injury, and a reasonable officer would know that acting the way Ramos did would create such a risk.

Cicinelli used excessive force when he assaulted and beat Kelly Thomas, acting recklessly, under the color of authority without lawful necessity.

At about 8:37 p.m. on July 5th, Ramos and Wolfe responded to the Fullerton bus depot in separate vehicles. Ramos knew Kelly Thomas from prior contacts as a homeless person who hung out in the area, and he did not believe Kelly Thomas posed them any risk. Kelly Thomas was shirtless with a backpack, wearing pants with no obvious bulges, and the officers did not think it was necessary to pat him down for weapons.

During the detention, Officer Wolfe stepped 10 to 15 feet away to the rear of his police vehicle to review the contents of the backpack while Ramos gave instructions to Kelly Thomas, who was sitting on the curb, from two feet away.

It was obvious that Kelly Thomas had difficulty following Ramos' directions to sit with his legs straight out and place his hands on his knees, and it would be obvious to any reasonable observer that Kelly Thomas had cognitive issues and difficulty in following Ramos' instructions.

After several minutes of increasingly-aggressive instructions, the bus depot video shows Ramos escalating the contact to a physical altercation. It was 16 minutes from the initial time of contact to the beginning of the physical altercation and engagement in unlawful police conduct.

Ramos made a deliberate showing of putting on Latex gloves while he approached Kelly Thomas and stood over him. Ramos repeatedly instructed Kelly Thomas to sit with his hands on his knees and his legs outstretched. Kelly Thomas would temporarily comply and then move his hands behind him in order to lean back on them, or bend his knees in a sitting position.

Ramos stood over Kelly Thomas threateningly as he put on a pair of Latex gloves.

He ordered, "Put your hands on your F-ing knees."

Ramos then leaned over Kelly Thomas in his menacing manner, made two fists with his gloves on, and lifted his fists to show Kelly Thomas as he said, "Now see my fists? They are getting ready to F you up."

This declaration was a turning point – a defining moment.

Ramos was telling Kelly Thomas that this encounter had changed from a fairly routine police detention into an impending beating at the hands of an angry police officer. By making this declaration of violence against Kelly Thomas, Ramos instilled in the victim a reasonable fear that his life was in danger by a police officer who wanted to use his fists to F him up.

Police officers have a right to use reasonable force in the performance of their lawful duties, but citizens have a right to self-defense – even against the police – if they are not using reasonable force in the performance of a lawful duty.

Ramos took this contact from a lawful detention to an unlawful use of excessive force when he lifted his fists and told Kelly Thomas that he was getting ready to F him up.

There followed a brief exchange of words as Kelly Thomas remained seated. Then Ramos grabbed Kelly Thomas by the back of the arm. Kelly Thomas pulled away, stood, and began stepping away from Ramos.

Then the baton came out. Kelly Thomas lifted his hands to chest-height with his palms open in a defensive stance. Ramos yelled at Kelly Thomas to "get on the ground."

Officer Wolfe ran over toward the altercation from behind the car. The evidence does not indicate that Officer Wolfe knew the exchange that had taken place between Ramos and Kelly Thomas or that Ramos had threatened Kelly Thomas and was engaging in unlawful excessive force.

The physical altercation began as Ramos swung his baton and chased after Kelly Thomas. Ramos punched Kelly Thomas several times in the left ribs after tackling him to the ground, using his hand to hold Kelly Thomas's neck, partially laying on Kelly Thomas to use his body weight to pin Kelly Thomas to the ground, and holding him for other officers responding to the call for help to use their physical force on Kelly Thomas.

Ramos caused Officer Wolfe to come to his rescue and apply force on Kelly Thomas including tackling him, kneeing him, punching him three or four times, and using his body weight.

Cicinelli arrived at the scene at 8:45 p.m. He kneed Kelly Thomas twice in the head and used his Taser four times on Kelly Thomas, including three times as a "Drive stun" for approximately five seconds each. The fourth was a dart deployment, in which two darts connected to wires were ejected from the Taser and affixed to Kelly Thomas for approximately 12 seconds. Kelly Thomas screamed and yelled in pain while being Tased.

Cicinelli used the front end of the Taser to hit Kelly Thomas in the head and facial area eight times while multiple officers pinned Kelly Thomas to the ground with their bodies.

All of this happened with no audible sounds from Kelly Thomas.

When Kelly Thomas did not scream in response to these blows, it should have indicated to Cicinelli that Kelly Thomas was down and seriously injured.

The rest of the police officers who arrived at the scene – Officer Hampton, Sergeant Craig, and Corporal Blatney - arrived later in response to the calls for assistance. The evidence does not show knowing-participation in an unlawful act on the part of these three officers. Thus, no charges are being filed against them at this time.

From what is visible on the video tape, Kelly Thomas' appeared to be acting in self-defense, in pain, and in panic.

Kelly Thomas' numerous pleas of "I can't breathe, I'm sorry, dad, help me," – to no avail.

Kelly Thomas' screams – to no avail.

Kelly Thomas not responding to repeated blows to the head – to no avail.

The growing pool of blood from Kelly Thomas as he became unresponsive – to no avail.

Ramos is charged with murder for recklessly creating the dangerous situation that placed Kelly Thomas' life in jeopardy and also creating a volatile situation for other responding officers.

We simply cannot accept that in our community it is within a police officer's right to place gloves on his hands, show his fists to a detainee, and threaten that he will F him up.

That is not protecting and serving.

Ramos had to know that he was creating a situation where Kelly Thomas feared for his life and was struggling to get away from an armed police officer who was going to F him up. Ramos had to know other officers would come to his aid and Kelly Thomas was going to get hurt – badly hurt.

This conduct that I just described is unacceptable.

It falls far short of the professional, reasonable police conduct our community has every right to expect, and do receive from thousands of police officers who risk their lives for us every day in Orange County.

All people in this great country of ours have a constitutional right to be free from the imposition of unlawful and excessive force under the color of law.

That is the rule of law, and we will proceed to enforce it.

Thank you and I will now call on you to answer your questions.