ORANGE COUNTY DISTRICT ATTORNEY

PRESS RELEASE

TONY RACKAUCKAS, *District Attorney*

Susan Kang Schroeder, *Chief of Staff*
Office: 714-347-8408
Cell: 714-292-2718

Farrah Emami, *Spokesperson*
Office: 714-347-8405
Cell: 714-323-4486

FOR IMMEDIATE RELEASE
Case # TBA

Date: September 21, 2011

OCDA CHARGES TWO FULLERTON POLICE OFFICERS FOR THE BEATING-DEATH OF 37-YEAR-OLD HOMELESS MAN

SANTA ANA – Orange County District Attorney (OCDA) Tony Rackauckas filed charges this morning against two police officers from the Fullerton Police Department (FPD) for their criminal participation in the beating-death of a homeless man, 37-year-old Kelly Thomas.

Officer Manuel Ramos is charged with one felony count of second degree murder and one felony count of involuntary manslaughter. He faces a maximum sentence of 15 years to life in state prison if convicted. Corporal Jay Cicinelli is charged with one felony count of involuntary manslaughter and one felony count of the use of excessive force. He faces a maximum sentence of four years in state prison if convicted.

The defendants surrendered this morning to OCDA Investigators and will be arraigned today, Wednesday, Sept. 21, 2011, at 2:00 p.m. in Department C-55, Central Justice Center, Santa Ana. Per the statutory bail amounts, the People will request $1 million bail for Ramos and $25,000 bail for Cicinelli.

Due to a lack of evidence, as described below, criminal charges were not filed against the remaining four officers involved in the incident including Officer Joseph Wolfe, Officer Kenton Hampton, Sergeant Kevin Craig, and Corporal James Blatney.

The decision regarding the filing of criminal charges was made by District Attorney Rackauckas following an extensive investigation and thorough legal review by the OCDA. The District Attorney will be announcing the trial team at a later date.

REMARKS BY DISTRICT ATTORNEY RACKAUCKAS

"During the pendency of this investigation, we have heard over and over again the word 'justice.' 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. 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. We must do everything we can to make sure we protect that trust, including prosecuting police officers if they violate the law."

"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."

INVESTIGATION OVERVIEW

The OCDA assumed the investigation into the death of Thomas on July 7, 2011. A team of six full-time OCDA Investigators and one Supervising Investigator has been assigned to this case. Approximately 12 additional OCDA Investigators, trained in custodial death investigations, provided assistance as needed. Senior Assistant District Attorney Jim Tanizaki, Assistant District Attorney Bruce Moore, and other senior OCDA managers provided legal analysis and direction in the investigation.

The evidence reviewed in this investigation includes:

- A 30-minute surveillance video taken from a pole camera at the Fullerton Transportation Center (FTC). The camera is remotely controlled by FPD Dispatch and can be moved to focus on various areas of the FTC. The camera pole is located approximately 150 feet northwest of the area where the incident occurred;
- Two cell phone videos taken by witnesses;
- Six videos of the area and persons around the area of the incident from Orange County Transportation Authority (OCTA) buses;
- Video and photographs of the crime scene taken by FPD after the incident;
- 151 witness interviews. 73 witness interviews were conducted during a canvass of the FTC and surrounding areas by OCDA Investigators during the weeks following the incident. The other 78 included 18 medical personnel such as responding paramedics and hospital staff. Six of the 78 are sworn FPD officers who responded to the scene after the end of indecent, two are civilian FPD employees, 11 are OCTA employees, and the remainder are civilian witnesses;
- Police reports from the six involved officers submitted to the OCDA on July 26, 2011;
- Audio from the incident from the Digital Audio Recording (DAR) devices of Ramos and Officer Wolfe, Corporal Blatney, and Sergeant Craig (DAR devices of Cicinelli and Officer Hampton were either not activated or not being carried);
- Integrated and enhanced video combining surveillance video with DAR overlay from all relevant officers;
- DARs from seven other responding officers who arrived after the incident;
- Two police batons used in the incident from Ramos and Officer Wolfe;
- One Taser and the downloaded information regarding its use from Cicinelli;
- Downloaded information from six additional Tasers, which were determined not to have been used;
- Medical records from St. Jude Medical Center (St. Jude);
- Medical records from University of California, Irvine Medical Center (UCI Medical Center);
- Photographs of Thomas from the hospital and autopsy;
- Forensic testing including DNA;
- Orange County Sheriff's Department (OCSD) Coroner's and Toxicology reports with consideration of all materials gathered and submitted by the OCDA;
- Dispatch logs and audio from FPD; and
- Other evidence.

LEGAL REQUIREMENTS

Murder (Penal Code § 187)

The law defining murder is described in CALCRIM 520 and states that, in order to prove a defendant is guilty of the crime, the People must prove that the defendant committed an act that caused the death of another person, had malice aforethought at the time of the act, and killed without a lawful justification.

There are two kinds of malice aforethought, express malice and implied malice. In this case, the defendant acted with implied malice if he intentionally committed an act, of which the natural and probable consequences were dangerous to human life. The defendant must have known the act was dangerous to human life and deliberately acted with conscious disregard for that life.

CALCRIM 520 states, "Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time."

Involuntary Manslaughter (Penal Code § 192(b))

The law defining involuntary manslaughter is described in CALCRIM 581 and states that, in order to prove a defendant is guilty of the crime, the People must prove that the defendant committed a crime or a lawful act in an unlawful manner. The act must have been committed with criminal negligence and the defendant's act must have caused the death of another person.

The defendant must have committed the acts with criminal negligence, which involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person know that acting in that way would create such a risk. Great bodily injury means significant or substantial physical injury that is greater than minor or moderate harm.

CALCRIM 581 states, "…a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act."

Excessive Force (Penal Code §149)

A law enforcement official is guilty of the use of excessive force under Penal Code §149 if the People prove that a public officer, under the color of authority, assaults or beats any person without lawful necessity.

Lawful Performance of a Peace Officer

The law defining the lawful performance of a peace officer and a detainee's right to resist is described in CALCRIM 2670, which states, "A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense."

The law further describes, "If a peace officer uses unreasonable or excessive force while (arresting, attempting to arrest/ [or] detaining or attempting to detain) a person, that person may lawfully use reasonable force to defend himself or herself."

CALCRIM 2670 continues, "A person being arrested uses reasonable force when he or she: (1) uses that degree of force that he or she actually believes is reasonably necessary to protect himself or herself from the officer's use of unreasonable or excessive force; and (2) uses no more force than a reasonable person in the same situation would believe is necessary for his or her protection."

Right to Self-Defense

The law defining the right to self-defense is described in CALCRIM 3470, which states that a person has a right to use force in self-defense if they reasonably believe they are in imminent danger of suffering bodily injury or are in imminent danger of being touched unlawfully. This person must reasonably believe that the immediate use of force is necessary to defend against the imminent danger and uses no more force than is reasonably necessary to defend against that danger.

CALCRIM 3470 states, "When deciding whether the [person's] beliefs were reasonable, consider all the circumstances as they were known to and appeared to the [person] and consider what a reasonable person in a similar situation with similar knowledge would have believed."

CIRCUMSTANCES OF THE INCIDENT

On July 5, 2011, at 8:23 p.m., FPD Dispatch received a call reporting a "homeless" man looking in car windows and pulling on handles of parked cars in the FTC parking lot. Officer Wolfe and a second officer in a separate patrol vehicle were contacted by FPD Dispatch at 8:34 p.m. to respond.

Ramos contacted FPD Dispatch to report that he was in the area and would take the lead for the call. The second officer was subsequently cancelled from the call and Ramos and Officer Wolfe responded to the scene by 8:37 p.m. in two separate patrol vehicles.

Ramos and Officer Wolfe contacted Thomas in the FTC north bus entrance lane near the intersection of East Santa Fe Avenue and South Pomona Avenue. Thomas was detained by the officers at that time but not placed under arrest. Based on prior undocumented contacts with Thomas, the officers behaved in a manner consistent with the belief that Thomas did not pose them any risk. Thomas was shirtless, wearing pants with no obvious protrusions, and the officers did not pat him down for weapons.

Ramos and Officer Wolfe spoke with Thomas, instructed him to sit on the curb, and requested to search a backpack in Thomas' possession. At 8:42 p.m., Thomas gave the backpack to Officer Wolfe, who stepped to the rear of his patrol vehicle to review the contents while Ramos stayed with Thomas. Officer Wolfe determined that some of the contents of the backpack, specifically certain items of mail, belonged to a person other than Thomas. He continued to review the contents of the backpack at the back of the patrol vehicle while Ramos stood over Thomas while he sat on the curb and gave instructions to Thomas from approximately two to three feet away.

Ramos is accused of instructing Thomas to put his legs out straight and place his hands on his knees, but Thomas had difficulty following Ramos' instructions. Thomas appeared to have cognitive issues and difficulty understanding Ramos' instructions.

After several minutes of increasingly-aggressive instructions, Ramos is accused of 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. The altercation is described below.

The physical altercation began at 8:52 p.m. and lasted nine minutes and 40 seconds until the victim was in handcuffs and no longer moving. Officer Wolfe called for all available officers to immediately respond to his location twice during the initial part of the physical altercation. All of the six involved officers arrived at the scene in uniform, in marked patrol vehicles, and while on-duty.

Throughout the physical altercation, Thomas struggled, yelled, and pleaded, "I can't breathe," "I'm sorry, dude," "Please," "Okay, okay," "Dad, dad," and "Dad, help me." Thomas was severely bleeding, but the officers did not reduce their level of force. Throughout the struggle, Thomas' actions were defensive in nature and motivated by pain and fear.

At 9:00 p.m., Fullerton Fire Department paramedics and an ambulance arrived at the scene. Due to the close proximity to FTC, and pursuant to medical protocol, Thomas was transported to St. Jude and arrived at 9:19 p.m. for intubation, or medical breathing assistance. He was then immediately transported to UCI Medical Center and arrived at 10:05 p.m. Thomas never regained consciousness.

FPD investigated the case on the night of the incident. The OCDA took over the investigation on July 7, 2011.

Thomas' injuries included brain injuries, facial fractures, rib fractures, and extensive bruising and abrasions. He died at UCI Medical Center on July 10, 2011, at 2:00 p.m. The OCSD Coroner's death certificate lists the manner of death as homicide and the cause of death to be "anoxic encephalopathy with acute bronchopneumonia," (asphyxia) caused by "mechanical

chest compression with blunt cranial-facial injuries sustained during physical altercation with law enforcement." The toxicology report shows that Thomas had no illicit drugs or alcohol in his system at the time of the incident.

The overall force applied against Thomas was excessive in its totality based on the fact that Thomas was unarmed and posed a low-level threat, the number of injuries sustained by the victim, location of injuries to the victim's face and head, number of officers involved, and overall number of punches, knees, Tasers, and Taser hits to Thomas.

CONDUCT OF INVOLVED OFFICERS AND LEGAL DECISIONS

Ramos

Ramos is accused of making the initial contact with Thomas and ordering the victim to sit on the curb with his hands on his knees and his legs outstretched. Ramos is accused of stepping away to speak with Officer Wolfe, re-approaching, and making a deliberate showing of putting on Latex gloves.

Ramos is accused of repeatedly instructing Thomas to sit with his hands on his knees and his legs outstretched. Thomas would temporarily comply and then move his hands behind him in order to lean back on them. Ramos is accused of then engaging in the following conversation with Thomas:

> Ramos: Put your hands on your f****** knees.

Thomas temporarily complied and then switched positions to be seated upright with his knees bent and his feet flat on the floor. Ramos is accused of again instructing Thomas to put his legs out straight and place his hands on his knees.

> Thomas: Which is it, dude?
> Ramos: Both!
> Thomas: I can't do both.
> Ramos: Well, you're going to have to learn real quick.

Thomas again complied with Ramos' instructions. At that time, Ramos is accused of moving to the left side of Thomas and leaning over him in a menacing manner. Ramos is accused of making two fists with his gloves still on and lifting his fists to show Thomas.

> Ramos: Now, see my fists?
> Thomas: Yeah. What about them?
> Ramos: They are getting ready to f*** you up.
> Thomas: Start punching, dude.
> Ramos: If you don't f****** start listening.
> Thomas: That sucks.
> Ramos: Yeah.

By making this threat of violence against Thomas, Ramos is accused of instilling in the victim a reasonable fear that the officers were going to unlawfully cause serious physical harm to him.

Ramos is accused of standing back upright until Thomas puts his hands behind him on the ground. Ramos is accused of leaning over Thomas again are ordering him:

> Ramos: Put your f****** hands on your knees.
> Thomas: Which is it?

Ramos is accused of then grabbing Thomas' left arm. Thomas pulled his shoulder back to release Ramos' grip. Ramos is accused of again reaching for Thomas' arm, but Thomas swept the officer's hand away with his own and stood up so that he was facing Ramos.

Ramos is accused of removing his baton and Thomas lifted his hands to chest-height, with his palms open in a defensive stance to block Ramos. Thomas began to back away but in no way assaulted Ramos. Officer Wolfe ran over at that time (see below). Thomas continued to back away from the advancing officers as they ordered him to the ground.

Ramos is accused of stepping forward and swinging his baton at Thomas' left thigh. It is unknown if he hit the victim or not. Thomas then turned and ran in front of one of the parked patrol vehicles. Ramos is accused of chasing after him and a physical altercation began on the other side of the vehicle.

Ramos is accused of tackling Thomas to the ground. Once Thomas was on the ground, Ramos is accused of punching him several times in the left ribs, using his hands to hold Thomas' neck, and partially laying on Thomas to use his own body weight to pin the victim to the ground. He is accused of using his body weight to minimize Thomas' movement as other officers arrived. He is accused of not informing the other officers at the scene that he had made menacing threats against Thomas or asking the officers to discontinue their use of force against Thomas.

Ramos is 37 years old and is a 10-year veteran of FPD.

Officer Wolfe

At the time Thomas stood up from the curb and faced Ramos, Officer Wolfe ran to them from the rear of the patrol vehicle, which was approximately 10 to 15 feet away, where he had been reviewing the contents of the backpack. The bus depot area was noisy at that time due to passing car and bus traffic. Officer Wolfe faced Thomas and drew his baton. He continued to approach Thomas as the victim backed away.

Officer Wolfe struck Thomas in the left leg with his baton. Thomas then turned and ran in front of one of the parked patrol vehicles. As Ramos chased directly after him, Officer Wolfe ran the opposite direction around the back of the patrol vehicle and met Thomas and Ramos on the other side. A physical altercation began on the other side of the vehicle.

Officer Wolfe tackled Thomas to the ground with Ramos, kneed and punched Thomas, and used his body weight to minimize Thomas' movement as other officers arrived.

Based on the available evidence and all of the information reviewed related to this case, the evidence does not show that Officer Wolfe was aware of the physical threat made by Ramos against Thomas, which escalated the lawful detainment to an unlawful use of force. The evidence does not show that Officer Wolfe was aware upon joining the altercation that he was assisting in the restraint of a victim who had been subjected to excessive force by Ramos. Due to the lack of evidence to show knowing participation in an unlawful act, no charges can be filed against Officer Wolfe at this time.

Officer Wolfe is 36 years old and is a 12-year veteran of FPD.

Cicinelli

Cicinelli arrived at the scene at 8:54 p.m. in his own patrol vehicle in response to the two calls for assistance from Officer Wolfe. When Cicinelli arrived, Thomas was on the ground with Ramos and Wolfe on top of him engaged in a struggle. Ramos' arm had become entangled with Thomas' arm.

Cicinelli is accused of responding to the altercation and kneeing Thomas twice in the head. He is accused of using his Taser four times on Thomas, including three times as a "drive stun" for approximately five seconds each. A "drive stun" is the direct application of the Taser to the skin. The fourth time was a dart deployment, in which two darts connected to wires are ejected from the Taser and affix to skin or clothing, for approximately 12 seconds. Thomas screamed and yelled in pain while being Tased.

Cicinelli is accused of using the front end of his Taser to hit Thomas in the head and facial area eight times. Thomas made no audible sound while being hit with the Taser. The last hit from the Taser was the last strike to Thomas. Cicinelli is accused of using the Taser on Thomas unreasonably and unnecessarily, given Thomas was pinned to the ground by multiple officers and was vulnerable with his head and face exposed.

Cicinelli is accused of kneeling on Thomas' body to use his own body weight to pin the victim to the ground. After paramedics arrived, Cicinelli is accused of commenting about his use of force and the physical damage to Thomas.

Cicinelli is 39 years old and is a 12-year veteran of FPD.

Officer Hampton

Officer Hampton arrived at the scene after Cicinelli at 8:54 p.m. in his own patrol vehicle in response to the two calls for assistance from Officer Wolfe. When Officer Hampton arrived, Thomas was on the ground with Ramos, Officer Wolfe and Cicinelli on top of him engaged in a struggle.

Officer Hampton approached holding handcuffs and looked for an opportunity to handcuff Thomas. Officer Hampton placed a handcuff around Thomas' left wrist. He assisted in applying the hobble, or ankle restraint, to Thomas' ankles and held Thomas' legs down using his hands.

Based on the available evidence and all of the information reviewed related to this case, the evidence does not show that Officer Hampton was aware upon arriving at the scene that he was assisting in the restraint of a victim who had been subjected to excessive force by other FPD officers. Due to the lack of evidence to show knowing participation in an unlawful act, no charges can be filed against Officer Hampton at this time.

Officer Hampton is 41 years old and is a 5-year veteran of FPD.

Sergeant Craig

Sergeant Craig arrived at the scene at 8:56 p.m. in his own patrol vehicle in response to the two calls for assistance from Officer Wolfe. When Sergeant Craig arrived, Thomas was on the ground with Ramos, Officer Wolfe and Cicinelli on top of him engaged in a struggle and Officer Hampton holding his feet.

Sergeant Craig approached and put one knee on Thomas's shoulder/back area to minimize Thomas' movement.

Based on the available evidence and all of the information reviewed related to this case, the evidence does not show that Sergeant Craig was aware upon arriving at the scene that he was assisting in the restraint of a victim who had been subjected to excessive force by other FPD officers. Due to the lack of evidence to show knowing participation in an unlawful act, no charges can be filed against Sergeant Craig at this time.

Sergeant Craig is 44 years old and is a 15-year veteran of FPD.

Corporal Blatney

Corporal Blatney arrived at the scene at 8:57 p.m. in his own patrol vehicle in response to the two calls for assistance from Officer Wolfe. When Corporal Blatney arrived, Thomas was on the ground with Ramos, Officer Wolfe and Cicinelli on top of him engaged in a struggle, Officer Hampton holding his feet, and Sergeant Craig restraining Thomas with a knee to the back/shoulder.

Corporal Blatney assisted Officer Hampton in applying the hobble to Thomas' ankles and then also held the defendant's legs down with his hands. Paramedics arrived at the scene at 9:00 p.m.

Based on the available evidence and all of the information reviewed related to this case, the evidence does not show that Corporal Blatney was aware upon arriving at the scene that he was assisting in the restraint of a victim who had been subjected to excessive force by other FPD officers. Due to the lack of evidence to show knowing participation in an unlawful act, no charges can be filed against Corporal Blatney at this time.

Corporal Blatney is 42 years old and is an 18-year veteran of FPD.

###