

## Cochran meets Torres family

Saturday, October 25, 2003

By [Glenna Jarvis - Staff Writer](#) - The Madera Tribune

Almost one year after the shooting death of 24-year-old Everado Torres, his family is still seeking justice, and demanding that changes be made to ensure no one is ever killed in the manner Torres was killed.

On Oct. 27, 2002, Torres was shot by Madera Police Officer Marcie Noriega, who said she intended to grab her **Taser** to subdue Torres and accidentally drew her 40-caliber Glock instead. She fired a single shot into Torres' chest.

Attorney Johnnie Cochran stood on the front porch of the Torres' South Street home Friday and said he took the Torres case because he was "very impressed with the family."

"When I talked to this extraordinary family," Cochran said, he learned they were "close knit" and "the loss of this tremendous young man (impacted the family greatly)."

"This young man was the spirit of this family," Cochran said. "He was the glue that held this family together. This particular case really cries out for changes in this (police) department."

Torres' mother, Maria Torres, said although it has been a year since her son's death, "it's like it just happened yesterday" and is "still very fresh for us."

Speaking through her daughter, Rosamaria Torres, Maria Torres said she is still very upset with Noriega.

"I am heartbroken," Rosa-maria Torres translated for her mother. "I am still very upset toward this person who took (my son's) life."

She said it is "not right" that Noriega will not face criminal charges, and added that she "does not understand how that could have happened."

"To be shot while handcuffed and in the back of a car - That should not have happened in this civilized society," Cochran said. "To be shot under these circumstances, where the story is given that the officer thought she was (drawing) her **Taser**. This was a man handcuffed in the back seat of a car, and he was shot with a Glock."

Torres' father, Melchor Torres, said he is still grieving for the loss of his son, and he wants to see the investigation "go through very deep" to uncover the truth.

He also said the family is very happy that Cochran has taken over the case, adding that "with the help of God, the truth will now come out."

The city's attorney, Bruce Praet, had negotiated with the family's initial attorney, Arturo Gonzalez, and



[Jeremy Rue-Staff Photographer](#)

Former defense lawyer for O.J. Simpson, Johnnie Cochran, was taken through the events of the night Everado Torres was mistakenly killed by a police officer by Torres' cousin, Carlos Torres



[Jeremy Rue-Staff Photographer](#)

Cochran meets with Melchor and Maria Torres, parents of Everado Torres.

was close to reaching a settlement, Praet said in an earlier interview. But the family changed attorneys in February, retaining Cochran to handle their \$10 million claim against the City of Madera.

Melchor Torres said that while the family had no specific grievance with Gonzalez, they felt he wanted to settle with the city, while the family wanted to take the matter further, and make sure everyone knew how their son died.

"He was wanting to give settlement only for the death," Melchor Torres said, "and wanted us to accept that, and nothing else would be done toward (Noriega). That was not something that we wanted."

Cochran said Friday that he has never talked about a settlement with the city, adding that the family didn't care about the money.

"It's not about the money," he said. "It's about making sure this does not happen to someone else. They don't want another family to have to go through this. They feel a responsibility to this community to try to get the message out about what really happened, and so far, that (message hasn't been delivered)."

"They want closure," he added. "They want change. They want to get some answers from Marcie Noriega ... about what happened."

In regard to the fact that the Madera County District Attorney's office determined no criminal charges would be brought against Noriega, Cochran said, he found the news both frustrating and disturbing.

"It's a rare thing when a district attorney has the courage to step outside ... and say this is wrong," Cochran said. "This is about the office of the courts, and about doing the right thing."

Assistant District Attorney Eric Wyatt said in a telephone interview last May that the fact Noriega is a sworn peace officer did not factor into the decision not to press criminal charges against her. He also said the decision was not made without many questions and "many sleepless nights" as he and District Attorney Ernie LiCalsi conducted the investigation.

"The required aggravation (needed to prove criminal intent) did not occur in this case," Wyatt said, adding that the decision "was not reached quickly or without a tremendous amount of reflection."

"For the past year, it has been very difficult for this family to look at their mother," Cochran said, "without seeing the lines in her face, seeing the pain there. Parents believe they should never have to bury their children. If this had been an auto accident, they might be able to live with that. But shot while handcuffed in the back of a car?"

He also said that the **Taser** strapped to Noriega's thigh was at least 18 inches from her service weapon, and he feels the case the city has filed against **Taser** International, Inc. last July was unwarranted.

"The makers of the **Taser** did not fire that Glock," Cochran said.

"People tend to want to blame the victim for his own demise," Cochran said. "These people have to go back and look at what happened step by step."

Currently, Cochran's office is taking depositions from witnesses to prepare their case. Already, they have taken about five, he said, and plan to take at least 10 more before the March trial date. Cochran intends to handle the case himself in Fresno, he said.

"Justice is on its way," he said.

The lawsuit, filed in federal court on Nov. 4, 2002, cites negligence, excessive force and violation of Torres' civil rights. The case is expected to go before a federal judge in March.

The lawsuit against **Taser** International, Inc., an Arizona-based corporation, cites negligence, product

liability and breach of express and implied warranties on the part of the manufacturer. That case is also pending in federal court.

A candlelight vigil will be held at 5:30 p.m. Monday in Calvary Cemetery to mark the one-year anniversary of Torres' death.

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## Case draws Cochran to Valley

**Famed lawyer visits Madera family of man killed by police.**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Sunday, October 26, 2003, 4:35 AM)*

MADERA -- Johnnie Cochran, who rose to fame for his defense during O.J. Simpson's 1995 murder trial, made his first visit Friday to the family of a young man killed by police.

It has been nearly a year since Madera police officer Marcy Noriega said she mistook her gun for a nonlethal Taser and shot 24-year-old Everardo Torres while trying to subdue him.

And it has been more than six months since Torres' family switched attorneys, dropping San Francisco lawyer Arturo Gonzalez in favor of Cochran.

Torres' family filed a \$10 million wrongful-death lawsuit last November against the city of Madera and Noriega, who was cleared in May of criminal wrongdoing by the Madera County District Attorney's Office.

The civil case is scheduled to go to trial June 29 in Fresno federal court.

Reaching a settlement with the city before the trial date is unlikely, Cochran said Friday: "They feel a responsibility to this community to at least get the message out of what really happened. They feel as though they have an obligation to be advocates for Everardo. They have a lot of concern. You talk to the parents, and they don't want any other parents to go through this."

Maria and Melchor Torres fought back tears as they stood on the front porch of their southeast Madera home with Cochran, members of his national law firm and family members.

Cochran said both he and the family want the Madera Police Department to make changes in how officers are trained to use their weapons.

Everardo Torres died Oct. 27. He had been arrested after he and two others allegedly resisted officers trying to break up a party at Madera Villa Apartments.

Madera police said Torres was unruly and difficult to restrain, requiring an officer to shoot him with a Taser just moments before he was placed in the back seat of a police car.

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Torres allegedly kicked at the windows of the police car; the lawsuit claims he was trying for nearly an hour to get the attention of an officer because his handcuffs were too tight.

Noriega said she was trying to subdue Torres with her Taser when she accidentally grabbed her Glock pistol and shot once. The city of Madera and Noriega have filed a lawsuit against Taser International Inc., manufacturer of the electronic device, and blame the company's training procedures for part of the problem.

"Clearly as I listened to these facts, it was hard for me to believe," Cochran said Friday. "I've been handling these cases for more than 40 years. I thought I'd seen a lot with the L.A.P.D., and later on in my life with the New York P.D. and police departments all across the country."

Cochran said the decision to clear Noriega of criminal wrongdoing was typical for a District Attorney's Office that works "hand in glove" with local law enforcement.

"It's a rare day that a district attorney has the courage, the fortitude and the integrity to step outside what is normal and say, 'Hey, this conduct was wrong,'" Cochran said.

He said he will ask state Attorney General Bill Lockyer to personally investigate the shooting.

Cochran said he expects to return to the Valley in March for a hearing in the case. His firm is gathering accounts from witnesses and expects to talk with Noriega later this year.

The family is holding a candlelight vigil at 5:30 p.m. Monday at Calvary Cemetery on Avenue 14 in Madera.

The reporter can be reached at [lapadilla@fresnoBee.com](mailto:lapadilla@fresnoBee.com) or 675-6805.

# Madera Tribune.com

## No charges against officer

Saturday, May 03, 2003

By [Glenna Jarvis - Staff Writer](#) - The Madera Tribune



Marcie Noriega, the Madera police officer who says she mistook her service weapon for her Taser and accidentally shot and killed Everardo Torres, 24, of Madera, will not face charges for the shooting. Madera police officers responded to a disturbance call at an apartment complex in the 2100 block of North Schnoor Avenue the night of Oct. 27, 2002. Shortly after, they requested assistance from sheriff's deputies. Nine officers, including two deputies, were attempting to break up a party that had gotten out of hand when the incident occurred, according to earlier reports. Three individuals were taken into custody, including Madera Torres.

[Angela Sykes-Staff Writer](#) Assistant district attorney for Madera County, Eric Wyatt, speaks during a press conference Friday regarding the officer involved shooting of Everardo Torres last October.

Torres was handcuffed and placed in the back of a police vehicle and, according to reports, attempted to kick out the vehicle windows. In an attempt to subdue Torres, Noriega intended to use her Taser, but drew her 40-caliber Glock instead and fired a single shot into Torres' chest, killing him.

"In a 1,100-page report, District Attorney Ernest LiCalsi told Madera Police Chief Kime ... (the DA's office) would not be filing charges against Marcie Noriega," Assistant District Attorney Eric Wyatt read from a prepared statement during a press conference Friday afternoon.

Wyatt explained that without the intent of criminal negligence, criminal charges against Noriega could not be sustained.

"The required aggravation ... did not occur in this case," he said.

"This decision was not reached quickly or without a tremendous amount of reflection," Wyatt said, adding that LiCalsi "strives to make decisions that - under the law - are just."

"It is the opinion of the Madera County District Attorney's office - under the law of California - not to file charges," he said.

Wyatt said the decision was based on all the evidence and statements of the witnesses at the scene.

"The man seated in the car next to Torres said he knew it was an accident when it happened," Wyatt said. "There is not a single piece of evidence showing intent on the part of Marcie Noriega."

He added that the decision was not made without many questions and "many sleepless nights" as he and LiCalsi conducted the investigation, and while he understands the moral issues involved - the fact that a life was taken - they could only seek justice as established by law.

"Despite what I may feel, it is our job to follow the law," Wyatt said.

Wyatt said that the fact Noriega is a sworn peace officer did not factor into the decision.

"There is nothing in the law that makes the standard any different," he said.

Earlier in the day, Wyatt sent two investigators to the Torres house to deliver a letter informing the family of the decision, he said, but he had no idea if they were successful in making that delivery.

The complete report has been forwarded to both the Federal Bureau of Investigation and the State Attorney General's office for review, Wyatt said.

"We've made everything available to them," he said. "We were committed to turning everything over to them so it could be double checked."

The night of the shooting, Torres had a blood alcohol level of 0.15 and his blood contained tetrahydrocannabinol, the active chemical in marijuana, according to the autopsy report.

Madera Police Department guidelines states the M26 Taser is a "control device to be used to control violent or

potentially violent suspects” and “should be worn when officers are responding to calls for service that may ... necessitate the use of the Taser.”

The M26 Taser can either be used in direct contact with the subject, or by firing projectiles which embed in the subject’s flesh. The projectiles can be removed by the officer unless lodged in a highly sensitive area, according to the guidelines.

Steve Tuttle, director of Government and Law Enforcement Affairs for Taser International, explained that the taser causes central nervous system override in which all conscious thoughts are overridden by subconscious thoughts in order to protect oneself from further perceived damage.

Attorney Arturo Gonzalez filed a \$10 million lawsuit in federal court against the City of Madera on Nov. 4 citing negligence, excessive force and violation of Torres’ civil rights.

In February, the Torres family changed attorneys, and hired Johnnie Cochran, the attorney who represented O.J. Simpson during the trial for the murder of his wife, Nicole Simpson.

Bruce Praet, the attorney representing the city, said he and Gonzalez had established a good working relationship, and he feared that the family rejected Gonzalez because his “target wasn’t what they wanted.”

Praet said he believed that the monetary value Gonzalez attached to the case has been exceeded by the Cochran firm, and the family had been given “unrealistic expectations” by the firm as to what the case is worth



## Local News

### Madera cop off the hook...

May 3, 2003 -- The Madera County District Attorney's office says they will not file charges against a city police officer who killed a man in her patrol car, thinking she was using her taser and not her service weapon.

In October of last year, Madera police officer Marci Noriega arrested Everado Torres, and put him in the back seat of her patrol car.

But soon afterwards, witnesses say Torres began kicking the window, and Noriega pulled her 40 calibre duty weapon and fired one shot, hitting Torres in the chest and killing him.

But in explaining her actions, Noriega reportedly told fellow officers that she meant to pull her taser, which was located on her leg, and not her gun, located on her hip.

In the investigation that followed, Assistant DA Eric Wyatt says he agrees that it was an accident, and no charges will be filed. Even among the media present there were many questions as to why a person could be charged for killing someone accidentally with a car, but a police officer cannot be charged for killing a person accidentally with a gun.

Wyatt responded by saying there was no law that allowed criminal charges to be filed, and he was not aware of any charges pending through the Department of Justice or the Federal Bureau of Investigation.

There were no representatives from the Madera Police Department to say if she will keep her job, and no members of the victim's family to express their feelings about the ruling.

The California Advocate Fresno's African American Community Newspaper Volume 36 No. 8 | **February 20**

Madera Family Hires Johnnie Cochran in Police Shooting... [Madera](#) | California

**The family of Everardo Torres, who was shot and killed by a Madera police officer while handcuffed in the back of a police car, has hired renown attorney Johnnie Cochran to represent them. He replaces San Francisco attorney Arturo Gonzalez.**

Police officer Marcy Noriega, shot and killed Torres Oct. 27, 2002 while he was handcuffed in the police car, thinking, she explained, she had her Taser gun instead of her revolver. A \$10 million claim filed by former attorney Gonzalez against the city of Madera, its Police Department, and officer Noriega was rejected by the city of Madera. Cochran is expected in Fresno March 10 when a case management conference will take place in the U.S. District Court in Fresno.

# Hefty damages sought

**Cochran to represent family of Madera police shooting victim.**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Wednesday, February 19, 2003, 4:53 AM)*

The family of a Madera man shot and killed by a Madera police officer last fall will seek "substantial damages" against the city of Madera and its Police Department, the family's newly appointed lawyer said Tuesday. Attorney Cameron Stewart of Cochran, Cherry, Givens, Smith and Stewart of Los Angeles will be just one of the legal minds representing the family of Everardo Torres, replacing San Francisco attorney Arturo Gonzalez of Morrison & Foerster.

Johnnie Cochran became well known for his defense during the O.J. Simpson trial in 1995.

The Torres family declined to comment on the change of attorneys Tuesday, but told The Bee in a previous interview that Gonzalez's "moral goal was not enough."

Stewart said the family is open to a settlement, but would take the case to trial if necessary.

"We definitely think this is a very substantial case," she said. "There was gross negligence and a violation of Mr. Torres' civil rights, so we will be seeking substantial damages."

The Cochran firm has represented a number of clients who were restrained with Tasers, she said, and in cases where death has occurred, those settlements were all seven figures, she said.

"This is an extremely tragic and unfortunate incident," she said. "We hope the city and the Police Department will step up to the plate and do the right thing."

Stewart said the family originally retained Gonzalez because they feared Cochran would be unavailable. "Based on his many years of experience based on police misconduct, they felt he would be better suited to represent them in this matter," she said.

A case management conference scheduled for today in U.S. District Court in Fresno was continued until March 10, Stewart said. She said it was likely Cochran would be in Fresno on that date.

A \$10 million claim filed by Gonzalez against the city of Madera, its Police Department and officer Marcy Noriega last November was rejected by the city and joined with a federal lawsuit also filed in Fresno by Gonzalez on Nov. 7. Gonzalez said attorney-client privilege prevents him from being able to discuss specific details about the family's decision to change attorneys, but he said his firm already has won the liability portion of the case, and he has placed a lien on its outcome.

"The city has admitted the shooting was negligent," he said. "Basically the case is over except for what is a fair award. The quality of the work we've done is second to none. We do not expect any dispute. We expect to resolve it in a professional manner."

Gonzalez said: "We wish them [Torres family] well in their continued search for justice."

Much of Gonzalez's original case was focusing on the department's use of Tasers and its use of force, and Stewart expects to do the same, examining Taser training procedures used by Madera police.

"We are very concerned there may have been a lapse in training," she said.

Torres, 24, was shot Oct. 27 by Noriega, while he sat with hands cuffed behind him in a police cruiser. The bullet pierced Torres' heart, liver and right kidney.

Noriega has said she believed she was holding a nonlethal Taser when she fired her service weapon.

Torres had been arrested after he and two others allegedly resisted officers attempting to break up a party at Madera Villa Apartments.

Madera police said Torres was unruly and difficult to restrain, struggling against the handcuffs and necessitating the use of a Taser during his arrest, just moments before he was placed in the back of a police car.

Stewart said: "We hope the city will compensate the family for their loss and not try to make Mr. Torres out to be a bad guy."

The reporter can be reached at [lapadilla@fresnobee.com](mailto:lapadilla@fresnobee.com) or 675-6805.

**Madera Tribune.com**

**Cochran takes Torres lawsuit**

Sunday, February 16, 2003

By Glenna Jarvis  
The Madera Tribune

Johnnie Cochran, the attorney who represented O.J. Simpson when he was tried for the murder of his wife Nicole Simpson, has been retained by the family of Everardo Torres to handle their \$10 million claim against the City of Madera.

Bruce Praet, the attorney representing the City of Madera, said it was unfortunate that Arturo Gonzalez had been dismissed from the case because he and Gonzalez had established a working relationship. Now, he said, he would have to "backtrack" from where he and Gonzalez had progressed.

"Arturo and I had established a good working relationship," Praet said. "Now, I have to establish a relationship with new lawyers. It's going to set us back a bit."

He said his only fear was that the family rejected Arturo Gonzalez because his "target wasn't what they wanted."

Praet believes that the monetary value Gonzalez attached to the case has been exceeded by the Cochran firm.

"I do have respect for Arturo Gonzalez," Praet said. "Between us, we could have brought this to an equitable solution for all parties involved."

Praet believes the Torres family has been given "unrealistic expectations" by the Cochran firm as to what the case is really worth, which is why the family chose to change attorneys.

"This was not something Arturo has asked for," Praet said. "Obviously, the family wasn't happy with what Arturo was telling them."

Praet added that if the Cochran firm has caused the family to gain unrealistic expectations, they may be forced to present the case to a jury.

"That would be unfortunate," he said, "for everyone to have to relive this."

While Praet said he had no problem admitting to a jury that the city is liable, he did have a problem asking a jury to put a monetary value on a person's life.

"The family has suffered enough grief," Praet said. "The value of this case is the value of the case, no matter who the lawyer is."

The existing lawsuit remains the same, Praet explained, but Gonzalez will be substituted by the Cochran firm. Gonzalez has placed a lien on the case for the work he has already performed.

Praet added that, if Gonzalez was an incompetent lawyer, he could understand the Torres family dismissing him. But this, he said, wasn't the case.

"Arturo Gonzalez is a very competent lawyer," Praet said. "I don't know what the Cochran firm used to lure them from Arturo. The only issue in this case right now is the value of the deceased."

While the release issued by the Cochran firm states Johnnie Cochran will become the lead trial attorney, Praet said it was more likely that his co-counsel, Cameron Stewart, will take the reins.

Cochran is expected to come to Madera for a press conference next month.

Gonzalez confirmed on Thursday he'd signed the substitute of attorney document substituting the Cochran law firm as legal council in the case.

"This is a substitution," he clarified, "not an association. I will no longer be on the case."

Gonzalez said his firm did what they could for the Torres family, and "won the first part of the case."

"The city has admitted they were liable," Gonzalez said. "They admitted that the shooting was negligent. The only question now is how much money is to be awarded to the family. I feel confident it will be a significant amount."

Torres, 24, was accidentally shot and killed by Madera police officer Marcie Noriega Oct. 27. Torres was handcuffed and in the back of a patrol car when the incident occurred.

According to reports, Torres was attempting to kick out the windows of the vehicle, and Noriega intended to subdue him to keep him from injuring himself. She mistook her 40-caliber Glock for her TASER, and fired a single round into Torres' chest.

Nine officers, including two Sheriff's deputies, were attempting to break up a party that had gotten out of hand, and Torres was arrested.

Torres had a blood alcohol level of 0.15, and his blood contained tetrahydrocannabinol, the active chemical in marijuana.

Gonzalez filed the \$10 million lawsuit in federal court against the City of Madera Nov. 4. The claim cites negligence, excessive force and violation of civil rights.

City Attorney Joseph Soldani said whoever represents the Torres family, the case will be handled with all the respect such a tragic accident commands.

Attempts to reach Cochran or Stewart were unsuccessful as of press time.

# Cochran takes on Madera shooting

**Family of man killed by officer rejected city's settlement offer.**

By Matt Leedy

The Fresno Bee

*(Published Sunday, February 16, 2003, 6:02 AM)*

MADERA, CA -- The family of Everardo Torres, who was shot and killed by a Madera police officer, has switched attorneys, dropping San Francisco lawyer Arturo Gonzalez in favor of Johnnie Cochran.

Everardo Torres' brother, Melchor Jr., said of Gonzalez, "His moral goal was not enough."

City officials offered a settlement payment through Gonzalez, Melchor Torres Jr. said. However, "what they offered us through that guy is not enough," he said. "We want to settle this case right. We have lost more than what they were offering us."

Melchor Torres Jr. would not say how much the settlement offer was for, but Madera City Council members in December rejected the family's \$10 million wrongful-death claim.

Torres' family filed a federal lawsuit in November.

Cochran was hired last month, family members said, but the Los Angeles lawyer who was the lead attorney for O.J. Simpson has not visited Madera yet.

Torres, 24, was shot Oct. 27 while he sat with hands cuffed behind him in a police cruiser.

Police officer Marcy Noriega has said she believed she was holding a nonlethal Taser when she fired her service weapon.

The bullet pierced Torres' heart, liver and right kidney.

The case is under investigation, and it's unknown whether Noriega will face criminal charges.

Torres, also known as Jesus Barrientos, was arrested after he and two others allegedly resisted officers attempting to break up a party at Madera Villa Apartments.

Madera police said Torres was unruly and difficult to restrain, struggling against the handcuffs and necessitating the use of a Taser during his arrest, just moments before he was placed in the back of a police car.

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Autopsy reports show Torres had several abrasions and cuts on his wrists and his right forearm.

Gonzalez has said Torres was trying unsuccessfully for nearly an hour to get the attention of Madera police because his handcuffs were too tight.

The reporter can be reached at [mleedy@fresnobee.com](mailto:mleedy@fresnobee.com) or 441-6208.

## Madera Tribune.com

### Torres autopsy report appears to confirm alleged struggle

Wednesday, January 22, 2003

By Glenna Jarvis

The Madera Tribune

The autopsy report on Everardo Torres, 24, showed nothing that had not been previously reported.

Torres died Oct. 27 from a single gunshot wound to the chest, after being accidentally shot by a Madera police officer.

His family, which has filed a \$10 million claim against the City of Madera, claims Torres was administered a shock from a Taser electric-shock weapon before he was brought to the patrol car where he eventually was shot after kicking at the windows.

The report showed "very light bruising" to the outsides of Torres' wrists, and "superficial abrasions," possibly sustained while Torres thrashed about and attempted to kick out the windows of the patrol vehicle after he was arrested, handcuffed and placed in the car.

In an attempt to subdue Torres, Madera Police officer Marcie Noriega intended to use her TASER, but unintentionally drew her service pistol and shot Torres.



The accompanying report, written by Det. Sgt. Bill Ward, stated that Madera police officers and deputies rendered first aid at the scene until the ambulance arrived. Torres was then transported to University Medical Center in Fresno, where he succumbed to his wound.

The bullet, according to the report, traveled 30-degrees downward, and 20 degrees from left to right, piercing the right ventricle of his heart, through the liver and lodging in his vertebra.

The report also noted several tattoos, including barbed wire and "MADERA" tattooed across Torres' abdomen.

Toxicology test results showed Torres had a blood alcohol level of 0.15 percent, and he tested positive for THC, the active chemical in marijuana.

The incident began when Madera police responded to a disturbance call at an apartment complex in the 2100 block of North Schnoor Avenue the night of Oct. 27. Shortly after they responded, police requested assistance from sheriff's personnel.

Several juveniles were sent home, and three individuals — including Torres — were taken into custody, according to reports. The occupants of the apartment were described as "uncooperative" and threw objects at the officers, necessitating a call for backup from the sheriff's department, according to statements made by former Interim Chief Steve Frazier.

A Taser dispenses an electrical charge which overrides the central nervous system, temporarily incapacitating a subject without permanent injury.

Handed the case over

Madera police detectives handed the case over to the DA's office for investigation, Sgt. Ken Alley said, to dispel any fear of bias. Wednesday, District Attorney Ernest LiCalsi said that initial investigation is now complete.

"The initial investigation has been completed by our investigator," LiCalsi said. "The case is now being reviewed by Assistant DA, Eric Wyatt, and myself."

"After we have reviewed the case, we will request whatever further investigation that we feel is necessary," LiCalsi said.

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## Dead man's scrapes detailed

By Lisa Aleman-Padilla

The Fresno Bee

Published 01/22/03 04:50:14

MADERA -- Everardo Torres had several abrasions and cuts on his wrists and forearms when he was shot and killed by a Madera police officer, an autopsy report shows.

Torres, 24, was shot as he sat with hands cuffed behind him in the back of a police cruiser Oct. 27.

Officer Marcy Noriega, who fired the fatal shot into Torres' chest, has said she believed she held a nonlethal Taser in her hand -- rather than her service weapon -- when she pulled the trigger.

Autopsy results made public Tuesday show several bruises and superficial scrapes on both of Torres' wrists and his right forearm. Included are a 1 1/4-inch bruise on the side of the right wrist, a similar-sized scrape on the middle of the left wrist and two other scrapes along both sides of the left wrist.

The exam also found a cut on the back of the right forearm just under an inch long, and an x-shaped cut over the back of the third finger of the right hand.

San Francisco Attorney Arturo Gonzalez, representing the Torres family, has said Torres had been trying for nearly an hour to get the attention of police because his handcuffs were too tight.

Madera police maintain that Torres had been unruly and difficult to restrain, struggling against the handcuffs and necessitating the use of a Taser during his arrest, just moments before he was placed in the police car.

Noriega told investigators she intended to again use a Taser to subdue Torres, who was kicking at the windows of the police cruiser.

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Toxicology reports indicate Torres had a blood-alcohol level of 0.15 at the time of his death. The drug screening was also positive for THC, a component of marijuana, present in blood for about 12 to 24 hours after use, the report said.

Torres, also known as Jesus Barrientos, was arrested after he and two others allegedly resisted officers summoned to break up a party at the Madera Villa Apartments about 8:15 p.m.

The official cause of death was a gunshot wound to Torres' heart and liver that also pierced his right kidney, according to the Madera County Sheriff's Department autopsy report.

The case is under investigation, and it's unknown whether Noriega will face criminal charges. A \$10 million claim filed against the city of Madera charging wrongful death was denied by the Madera City Council Dec. 4, and will be joined with a federal lawsuit filed Nov. 7. The reporter can be reached at [lapadilla@fresnobee.com](mailto:lapadilla@fresnobee.com) 675-6805.



January, 1, 2003

Everardo Torres died of a gunshot wound to the heart while he was handcuffed in the back of a patrol car. Madera police officer Marcy Noriega shot him, explaining that she intended to use her M26 Taser gun to calm Torres but grabbed her Glock 23 handgun instead and shot him. Everardo's family filed a \$10 million lawsuit; other incidents in the officer's career are also being investigated.

## Madera Tribune.com

### Torres case sent to FBI

Wednesday, December 11, 2002

By Glenna Jarvis

The case of an officer-involved shooting which resulted in the death of Madera resident Everardo Torres was handed over to the Federal Bureau of Investigation Tuesday.

The case was given to FBI Agent Michael Repucci, who was not at liberty to comment on the case.

Agent Nick Rossi, media representative with the FBI Sacramento Bureau, said the investigation is standard procedure in officer-involved shootings.

"Our investigation will parallel that of the department's," Rossi said. "We will review the facts, as a neutral party."

Rossi said the FBI will be reviewing much of the same information the Madera department has already gathered.

"Reality is, in most officer-involved shootings, we will open a concurrent investigation of the facts," Rossi said.

How long the investigation will take, he said, was difficult to determine.

Earlier in the week, Ernest LiCalsi, district attorney for Madera County, was forced to wrap up his investigation prematurely. No one who attended the party the night of Oct. 27 when Torres was shot would give LiCalsi a statement, he said.

Arturo Gonzalez, attorney representing the Torres family, said he is conducting his own investigation, and has served the city with "a number of written discovery requests" in order to gather information.

That information, he said, should be provided by Dec. 27.

Torres was killed when officer Marcie Noriega mistook her service issue, 40-caliber Glock for her TASER, and fired a single bullet into Torres' chest. Nine officers, including two Sheriff's deputies, were attempting to break up a party which had gotten out of hand, according to reports, and arrested Torres along with two other suspects.

Torres was handcuffed and in the back seat of a patrol vehicle when the incident occurred. He was attempting to kick out the vehicle's windows, according to reports, and Noriega intended to subdue him to keep him from injuring himself.

Toxicology tests performed as part of the autopsy showed that Torres had a blood alcohol level of 0.15 and tetrahydrocannabinol, the active chemical in marijuana, in his system.

Gonzalez filed a lawsuit in federal court, and a \$10 million suit against the city.

The city has admitted that liability exists, according to attorney Bruce Praet, and intends to offer a fair settlement in the case and establish the incident as the tragic accident it is, he said.

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**State will wait until Madera inquiry finished**

The state Attorney General's Office will not investigate the death of Everardo Torres until Madera County District Attorney Ernie LiCalsi completes a local investigation, said Arturo Gonzalez, an attorney representing Torres' parents.

Gonzalez filed a federal lawsuit this month against the city of Madera and police officer Marcy Noriega for the wrongful death of Torres, following his arrest for a misdemeanor. Noriega shot Torres in the chest with her Glock pistol after she mistook the firearm for her Taser.

The Torres family had requested a separate investigation by the state office because of concerns that the local District Attorney's Office would be unable to conduct an objective investigation.

Gonzalez said Monday if LiCalsi decides not to investigate the case, he could ask the Attorney General's Office to review that decision.

**Family Files Federal Lawsuit Against City in Handcuffed Killing**  
**Family's Attorney Hopes For Criminal Charges To Be Filed Against Officer Marcy Noriega By Madera DA**  
**Story & Photos by Jack Porter**

**Madera Online: You've Heard The Rumors Now  
See For Yourself What All The Fuss Is About**

**Madera** - The family of a man killed by Madera Police Officer Marcy Noriega in the back of her police squad car has filed a federal lawsuit against the officer and the city of Madera.

The lawsuit is just the second action taken this week by the family's attorney Arturo Gonzalez, who filed a claim with the city of Madera in excess of \$10 million for the killing of Everardo Torres last month.

While the city has 45 days to respond to the claim, Gonzalez wants to start his investigation into the killing now. The family is barred from filing in a state court until after the city's 45 days expires. At that time Gonzalez says he will file a second lawsuit against the city that will be a part of the federal suit.

Gonzalez says the federal case will be heard in by U.S. District Judge Anthony Ishii. Judge Ishii presided over another of Gonzalez's cases that involved an unlawful shooting by a police officer. That case involved the Modesto Police Department and the shooting of an eleven-year old boy killed by a SWAT sergeant.

Gonzalez did not specify a monetary demand in the federal lawsuit. "I think what I'm going to do here is let the jury decide what the value of this man's life was," Gonzalez told Madera Online.

The Torres family has no interest in mediating or settling this case with the city of Madera until all the facts are known. "You could write me a check today for \$10 million and we would turn it down," Gonzales said.

Gonzalez says it doesn't make any sense how a person who is arrested for disturbing the peace is shot through the heart while handcuffed in the back of a police squad car. He is still in contact with the California Attorney Generals Office and the Madera County District Attorney to seek criminal charges to be filed against Noriega.

"We need the government to help us fight this case in the criminal court because of what happened here. If it was intentional, it would be murder. If it was not intentional, then it was reckless, which makes it manslaughter. In either case, it is a crime. We believe it is a crime that needs to be punished so people will be more careful so this does not happen to another family," Gonzalez told reporters outside the Federal Court Building in Fresno Thursday morning.

"This is the sort of thing that would shock us if it happened in Turkey or China and we read about it. We would be shocked. The fact that it happened here in Madera is something that we want to make sure doesn't happen again."

The Madera County Coroner's Office released a press release Wednesday that listed Torres' blood alcohol level at twice the legal limit set by the California Vehicle Code. It also indicated that Torres may have consumed marijuana that night. Gonzalez said that Torres being an adult over twenty-one may have drank alcohol that night and admitted that Torres may have consumed marijuana, but questioned if that was a reason to shoot him through the heart. "We think this is an example of the tactics that we expect the defendants to use in this case. Since they can't justify the shooting in any way, we expect that they are going to try to attack Evie's character," Gonzales added.

The family claims that Torres was tasered in the apartment, prior to being placed in the squad car, by either Madera Police Officer Ballard or Green. A cousin to Torres claims one of the officers commented on how he completely drained the power supply of his taser weapon on Torres before he was handcuffed and brought down to an awaiting car. A female who was also placed in the back of that car claims that Torres was having trouble walking and fell asleep in the back of the car for the forty-five minutes to an hour he was in there.

When officers removed the female and put another male suspect in the vehicle with Torres, the victim asked to have his handcuffs loosened because they were cutting into his wrists. When officers refused Torres began kicking a Plexiglas window in the vehicle. The cousin who fears retaliation from the police said Noriega told other officers, "Let me quiet him down." Seconds later the officer drew her department issued Glock 23 and fired one round into Torres chest.

A photograph of Torres' wrists taken in his casket was provided to Madera Online by the family. The photo shows black and blue marks around the wrist and skin that was torn away by the metal handcuffs. Family members said that the markings went all around the wrists on both arms. They added the Madera County Coroner's Office also took pictures of Everardo that were turned over to the district attorney investigators.

Madera Police responded to a loud party complaint on October 27 at the Madera Villa Apartment complex in northwest Madera. Police claim that when they arrived they were pelted with beer bottles and cans, and needed to call Madera County Sheriff's Deputies to help.

At some point officers removed Everardo Torres and a female friend from the apartment by Madera Police Officers Ballard and Green and Madera County Sheriff's Deputy Greggs. Both Torres and the female were yelling "Why are you doing this, we didn't do anything."

Torres and the female friend were taken into custody and according to Noriega would be charged with evading arrest and conspiracy to injure a law enforcement officer.

An hour after Torres was placed into the back of a police squad car and after Madera County Sheriff's Deputies left the scene, Noriega shot Torres in the chest with her .40 Glock handgun. Torres died a short time later.

It is unknown at this time if any charges were filed against anyone that evening. Files that were once public record are now being withheld by the city of Madera and the city will only answer questions through a Los Angeles attorney that has yet to return any of our calls.

## Police officer's weapon is a heavy burden of responsibility

By Jon Love

*(Published Friday, November 15, 2002, 5:15 AM)*

A Madera policewoman, intending to stun a combative suspect with a Taser, mistakenly reached for her pistol and shot the man to death. The suspect, handcuffed and in the back seat of a patrol car, was trying to kick out the car's rear window. A professional boxer, he had been arrested for interfering with officers as they broke up a loud party. I read this and all I can say is, "Oh, no." She's experienced, six years on the job and acting as watch commander. "Oh, no."

It's the sort of thing that plays over and over in your head. How do you take it back?

Gets in the way

You wonder why a cop makes a good salary? There it is. Not only do people shoot at you, try to run you over, throw knives, rocks and bottles at you, but the job gives you a handgun and you're supposed to know how to use it. And the handgun is such a heavy responsibility.

Often, it just gets in the way. It's deadly force, and a cop gets to use deadly force only in certain circumstances. Generally, the cop has to be in fear of his life. But if the crook is running away, it doesn't look like there's much to fear from him.

If the cop goes in foot pursuit, he's got to worry about the gun falling out of its holster.

Worse, if the cop catches the crook and decides to go hand to hand, the gun is hanging on his hip, out there for anyone to grab. And it's so easy to make a mistake with it.

Ask someone who has lived with the handgun, get him in a weak moment, ask if he's ever screwed up with his gun. Accidental discharge, it's called. And if the moment's weak enough, from the deep, dark recesses of his memory, maybe he'll bring it up.

Unintentional firing

There was the time a sergeant was assisting a patrol unit on a traffic stop. During a permissive vehicle search, the sarge found a loaded shotgun in the trunk.

While unloading the weapon, the sarge unintentionally fired a load of buck shot through the floor of the trunk and into the gas tank, causing him to forever since be known as "Sergeant Boom Boom."

Then there was the deputy practicing fast draw who forgot to unload his revolver and put a round into the training room floor, and the detective, showing how the safety worked on his new S&W 9mm, who put one into the overhead of the secretarial pool at the Hall of Justice.

And who knows how many television sets have been nailed while dry firing at the nightly news commentator with an empty revolver. These guys are the lucky ones, and they know it. The unlucky ones are like the Madera officer.

Years ago, some departments had the shotgun rack under the forward portion of the front seat. The shotgun being less visible there, it was thought to give the patrol unit a friendlier image.

An officer, in his haste to get the gun, had some part of it hang up on the latch, causing the weapon to fire, killing his partner. Oh no. It shouldn't have fired. It was carried by the book, cocked and locked on an empty chamber and it shouldn't have gone off.

Most departments now mount the shotgun rack on the dash, positioned with the muzzle pointing skyward, so when it goes off accidentally, all it does is blow a hole through the car roof and damage the officer's hearing.

The important thing is where the muzzle is pointing. Over the course of 30 or 40 years, there's a chance an officer will have an accidental discharge.

The gun goes off, he didn't intend it to, he shouldn't have fired, but thank God the muzzle was pointed in a safe direction.

Put yourself there

But don't listen to me. Put yourself there with the Madera officer. It's the heat of the moment, the rest of the shift is looking to you for decisions, for answers, and you're in a position few people in our society have to face.

It's the sort of mistake that haunts your dreams. The lawyers are already pounding on the door, and you wonder why a person would take a job like this.

"Oh, no." There, you're seeing it again and all you can say is, "Oh, no."

Jon Love of Hanford is a special correspondent for The Bee.

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## **Madera policy limits officers to use of 'necessary' force**

**Lawyer for family of slain man says Taser use wasn't justified.**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Thursday, November 14, 2002, 5:21 AM)*

Madera police officers may use only the amount of force that "reasonably appears necessary" to control an incident, according to department policy.

The family of shooting victim Everardo Torres wants a jury to decide whether officer Marcy Noriega used excessive force when she intended to use her Taser to subdue Torres, who was handcuffed and in the back of a patrol car. Torres had been arrested for allegedly resisting and delaying police officers who were trying to break up a party Oct. 27.

Noriega said she meant to fire her Taser when she fired a shot into Torres' chest, but Torres family attorney Arturo Gonzalez said even the use of a Taser wasn't justified by the department's own policy.

"The city's policies don't authorize the force she says she was trying to use," said Gonzalez, who last week filed a \$10 million claim against the city as well as a lawsuit in U.S. District Court.

Despite Gonzalez's claims of unreasonable force, Bruce Praet, the attorney handling the case for the city, said use of force is not what the case is about.

"The case centers on being an accidental shooting," he said.

The department's use-of-force order, adopted in January 2000, provides a list of factors officers must consider before using any force, including the suspect's conduct, alleged offense, use of alcohol or drugs, mental state and size and strength relative to the officer's. The proximity of weapons is also a consideration.

"Every single one of these factors cries out against the force she claims that she was trying to use," Gonzalez said. "It cries out she overreacted."

Torres, 24, was a professional boxer. Noriega is older, but trained in the use of firearms and control devices and tactics. It took Noriega and eight or nine other police officers and two sheriff's deputies more than two hours to quell several partygoers.

Toxicology reports show that Torres had a blood-alcohol level of 0.15 and traces of THC, the active ingredient in marijuana, in his bloodstream when he died.

Praet said that while Torres' level of intoxication does not justify his death, it may tend to explain his behavior. Praet also said that Torres would not have been in the patrol car had it not been for his conduct.

Torres did not have any weapons, but Noriega had her Glock pistol, Taser and pepper spray available, and was backed up by other officers.

Torres had been arrested for allegedly resisting and delaying police officers, a misdemeanor, and was handcuffed and in the back of the patrol car. Though he was reportedly kicking car windows, it was unlikely that he would have been able to escape, Gonzalez said.

"He wasn't going anywhere," he said.

About 32 Madera police officers carry Tasers. Interim Police Chief Steve Frazier has said Noriega had been authorized to carry the Taser for about a year.

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Praet said the department's officers have had Tasers since January and that each officer received about four hours of training as outlined by the manufacturer.

Tasers are used to "control violent or potentially violent suspects," the department's policy says. They are considered in a category with batons, bean bag projectiles and pepper spray and are only allowed to be used by officers who have completed the department's Taser training program.

Attempts to contact Noriega for a comment have not been successful. Noriega's apartment showed no signs of life Tuesday, and neighbors said they don't know where she went. Layers of spider webs clung to the apartment's front door, and one of the window sills held Halloween decorations.



## Family of police victim plan lawsuit

By Daniel Rodríguez

Vida en el Valle

*(Published Wednesday, November, 6, 2002 11:08AM)*

MADERA -- Police officer Marcy Noriega, who stands accused in the shooting death of Everardo Torres, is described as various residents in the community as a person who carried out her duties with a less-than-positive attitude and whose career record might reflect other negative incidents. Torres received a fatal gunshot to the chest, which went through his heart and liver when Noriega confused her M26 Taser with her Glock 23 handgun.

"I have heard that she has had problems before but I have no proof, said attorney Arturo González. "That is why we are going to file a suit against her. I do not want to wait until the conclusion of the internal investigation by the Madera Police Department (which is said to conclude in 3 months). Once this suit is filed, we can begin our own investigation and, in fact, interrogate the accused ourselves."

Torres, 24, was fatally wounded the night of October 27th when police were called out to the Madera Villa apartments, located at 2100 N. Schnoor, where, apparently, a loud party was going on and neighbors had complained. Upon arriving, the police found Torres sitting on the floor. "They asked him his name and when he refused to tell them, they handcuffed and arrested him," said Jesús Rueda, who attended the party.

Torres struggled and police "started to shock him with their guns. We told them not to do that and one of the girls (who was identified as Erica), intervened but was arrested herself." Rueda said that with all the shocks Everardo received he was unable "to talk or scream. He desperately opened his mouth due to the agonizing pain he felt. If he moved at all, it was due to that." He pointed out that many of the officers standing around "laughed at his facial expressions...."

Torres remained in a patrol car for 30 to 40 minutes while officers gathered the necessary information for their report. Apparently Torres was attempting to get out of the patrol car, while handcuffed, by hitting the windows when Noriega, in an attempt to calm him with her taser, fired a shot.

"It could have been intentional or a mistake", says González, "and that is why we want to file suit as soon as possible so we can get started on our investigation."

"He was killed 'execution style'," said Carlos Torres, cousin to the deceased.

According to the interim police chief in Madera, Steve Frazier, taser guns are similar to a Glock 23, which is the official gun used by the department, even though the taser gun is longer due to its integrated battery pack and 10 ounces lighter than a conventional gun. The Madera Police Department has turned over the case to the county's district attorney's office.

"The district attorney is quite close to the police department and we want all the evidence as soon as possible," said González, who pointed out that 3 private investigators are already gathering the necessary information. González isn't disclosing the details of the suit at the moment. "What we want is justice."

With over a dozen similar cases to his credit, which have netted over 20 million dollars, González says that what is most important is to "avoid this from happening somewhere else because, frankly, I feel sad that these things happen so frequently in the Latino community. I have seen similar cases in Fresno, Merced, Stockton, Modesto, everywhere." Through their lawyer, the Torres Family has asked Bill Lockyer, the state's District Attorney, to conduct an independent investigation of the incident. "This will be turned over to the Crimes and Civil Rights division," Halle Jorday, spokesperson for Mr. Lockyer, informed.

Everardo Torres, who was an amateur boxer for several years and dreamt of making it as a professional, was buried in Madera Cemetery last Thursday.  
Send e-mail to: [danielr@vidaenelvalle](mailto:danielr@vidaenelvalle)



## Family files suit in federal court after son's killing by officer

The family of a Madera man accidentally shot and killed by police has filed a second lawsuit against the city.

The lawsuit, a civil suit filed in federal court in Fresno, accuses the Madera Police Department of violating Everardo Torres' constitutional rights. Torres' family stood with their attorney, Arturo Gonzalez, in a show of support outside the federal courthouse Thursday. Gonzalez said the family wants its day in court and has no interest in settling the case.

The lawsuit accuses Officer Marcie Noriega of reckless behavior when she mistakenly shot Torres with her handgun instead of her Taser almost two weeks ago.

The family filed a separate, \$10 million claim against the city Monday. Madera officials have 45 days to accept or reject the claim. If it's rejected, Gonzalez will formally file another lawsuit in state court.

Toxicology tests showed Torres, 24, was legally drunk and had traces of marijuana in his system when he died, but his family said there's no excuse for the mistake police made.

Madera city administrators said if the city has to pay the Torres family, the city's insurance would cover the costs and residents wouldn't see a tax increase because of a possible settlement.

<http://www.ksee24.com/temp/images/vid-broadband.gif>

# Madera Tribune.com

## Tests show Torres intoxicated

Thursday, November 7, 2002

By Glenna Jarvis

Results of a toxicology test performed in connection to the autopsy of Everardo Torres, the victim of an accidental police shooting on Oct. 27, were released on Wednesday through the Madera County Sheriff's Department, Coroner for Madera County.

According the test, both alcohol and THC were present in Torres' system. THC, or tetrahydrocannabinol, is the active chemical in marijuana.

Torres' blood alcohol level was .15, almost twice the legal limit for driving, according to the department's Public Information Officer, Erica Stuart.

During an interview with Bruce Praet, the attorney for the city, he said that although Torres was not driving, the fact he was intoxicated and had been smoking marijuana may have contributed to his behavior.

"It confirms the officer's claim at the scene — that alcohol and marijuana were being used at the party. It helps explain Torres' behavior in the cruiser — resisting the officers and kicking at the windows. And, it indicates that the use of alcohol and marijuana contributed to the circumstances that lead up to Torres being in the back of the police car in the first place," Praet said.

No Taser Marks

Though Arturo Gonzalez, the family's attorney, had previously suggested that Torres had been subjected to a Taser while still inside the apartment, Chief Deputy Coroner Mike Molsbergen on Thursday said no evidence was found during the autopsy to support the claim.

"We did not find anything that would have indicated Tasers," Molsbergen said. "Nothing was identified as being prior Taser marks."

According to information derived from Taser International, a company that sells Tasers to law enforcement agencies nationwide, the electric jolt from a Taser will incapacitate a subject, immobilizing him and sending him into convulsions. The pain lasts several seconds, and the subject may remain immobile anywhere from three to 20 minutes. The shock and resulting convulsions converts the energy, or sugar, in the blood to lactic acid, leaving the subject temporarily lethargic.

The effects are not permanent, and are not life-threatening, according to Steve Tuttle, director of Government & Law Enforcement Affairs for the company. But the Taser does leave marks on the skin when administered through direct contact, and leaves two metal barbs in the skin when used in projectile mode. The barbs must be removed by a doctor.

Gonzalez had also previously suggested that the use of a Taser on a person restrained in a police cruiser would be considered excessive force. But Praet said that the use of the Taser under the conditions Noriega faced were not excessive force, but would actually have been "a textbook application of the Taser weapon."

"If Torres had been allowed to kick out that glass, he could have been subject to serious injury," Praet said. "Police officers are not supposed to allow a person in custody to damage police property or injure themselves, therefore the application of a Taser would have been very much in keeping with its designed use," Praet explained.

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## Madera, officer sued in shooting

**Parents allege in suit unreasonable use of force in son's death.**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Friday, November 8, 2002, 4:55 AM)*

The parents of Everardo Torres filed a federal lawsuit Thursday against Madera police officer Marcy Noriega and the city for killing their 24-year-old son.

The lawsuit is the second legal step taken this week by Melchor and Maria Torres, whose son was shot in the chest by Noriega while handcuffed and in the back of a Madera police car Oct. 27.

The couple's attorney, Arturo Gonzalez of San Francisco, filed a \$10 million claim this week against the city of Madera, which has 45 days to respond. Gonzalez said that claim, if rejected, will join with the federal lawsuit, which did not request specific damages.

"We did not make a specific monetary demand in federal court," Gonzalez said. "I think what I am going to do here is ... present the case to a jury and let them decide what the value of this young man's life was."

Gonzalez said the case will be heard by U.S. District Judge Anthony W. Ishii, who presided over an unlawful-shooting case Gonzalez recently brought against the city of Modesto.

That case, involving the police shooting of an 11-year-old boy two years ago, was settled in June for \$3 million.

"We are very confident we're going to get a fair hearing before a jury in front of Judge Ishii," Gonzalez said. "We look forward to presenting this case to a jury. It's going to be a long fight. We're prepared for that."

The Torres family is not interested in mediating or settling with the city of Madera until it finds out what happened the night of the shooting, Gonzalez said.

"You could write me a check for \$10 million and we'd turn it down," he said.

He also said he would be urging the state Attorney General's Office and the Madera County District Attorney's Office to file criminal charges against Noriega.

"We're going to fight this case in civil court, and that is all that we can do," Gonzalez said. "But we need the government to help us fight this case in a criminal court because of what happened here. If it was intentional, it would be murder. If it was not intentional, then it was reckless, which makes it manslaughter. In either case, it is a crime."

The lawsuit gives this account of the Oct. 27 shooting:

Torres was playing video games with his 12-year-old brother and a few friends when the gathering got so loud that a neighbor in the Madera Villa Apartments called police.

Officers went into the apartment and arrested some of the occupants, including Torres. After Torres was handcuffed, officers shot him with a Taser and placed him in the back of a police car, where he remained for close to an hour.

Torres pleaded with officers to loosen his handcuffs, which were too tight. Finally, Torres kicked the window of the police car to get the officers' attention. Noriega walked over to the car, opened the door and shot Torres in the chest with her Glock pistol.

Noriega told investigators she mistakenly drew her handgun when she reached for her Taser.

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Gonzalez alleges police illegally entered the apartment without a warrant or good cause.



He also charges that the shooting was an unreasonable use of force and that the failure of officers to loosen Torres' handcuffs was "unreasonable detention."

Gonzalez said photos of Torres' bruised wrists confirm that allegation.

Gonzalez said the Madera police force's training will be important to the case.

He said he is looking into whether any of the officers present during Torres' arrest had any past allegations of excessive force.

Gonzalez called Torres' toxicology results, released this week by the Madera County Sheriff's Coroner's Office, "irrelevant."

The test revealed that Torres had a blood-alcohol level of 0.15 and that he tested positive for THC, an active ingredient in marijuana.

"Whether or not 'Evie' had consumed alcohol on the night of his death is completely irrelevant," he said.

"Prohibition was outlawed a long time ago. Even if you assumed he smoked marijuana, it doesn't mean you shoot the man through the heart."

Carlos Torres, the victim's cousin, said Thursday that the family continues to struggle with the events of the past two weeks. He said they would not want anyone, even Noriega, to go through what they've endured.

"It's been really painful and sad," said Carlos Torres. "It's a real terrible thing that's happened."

He said his cousin longed to earn enough money through a boxing career to allow his mother to quit her job as a bagger in a Madera candy factory.

The reporter can be reached at [lapadilla@fresnobee.com](mailto:lapadilla@fresnobee.com) or 675-6805.

## Police Report & News Briefs

Compiled from Bee staff reports

*Published 11/07/02 04:30:20*

Man jailed in Tuesday shooting of Visalia man

An 18-year-old man was arrested on suspicion of attempted murder Tuesday after police said he shot a Visalia man on the 700 block of North Bridge Street.

Police said Adrian Hernandez and an unidentified man walked up to Manuel Villa, 20, and shot him several times.

Villa was taken to Kaweah Delta Hospital, where he was in stable condition Wednesday, police said.

Hernandez was arrested a few hours later in the area of Northeast Third Avenue and Grape Street. Police said Hernandez is the brother of Antonio Hernandez, who was killed in an Oct. 25 shooting in Visalia.

Madera shooting victim

had alcohol, pot in system

**Madera County Sheriff-Coroner's Office released the toxicology results of a Madera man fatally shot Oct. 27 by a Madera police officer.**

**Results show Everardo Torres, 24, had a blood alcohol level of 0.15 and that he tested positive for THC, tetrahydrocannabinol, the active ingredient found in marijuana.**

**Torres was shot by Officer Marcy Noriega, who said she meant to use a Taser to subdue the handcuffed man as he sat in the back of a police cruiser kicking at the windows.**

**Instead, she grabbed her Glock 23 pistol and fired a single shot into Torres's chest, killing him.**

**The Madera County District Attorney's Office is currently investigating the shooting to determine if Noriega, a six-year veteran of the Madera Police Department, will face criminal charges.**

# Madera Tribune.com

## Attorney for Torres family files suit against city in Federal Court

Thursday, November 7, 2002

By Glenna Jarvis

Attorney Arturo Gonzalez filed a lawsuit Thursday in Federal Court in connection with the death of Everardo Torres, 24, who was accidentally shot by a Madera Police officer Oct. 27.

The suit, filed on behalf of the Torres family, is the first step toward getting answers to questions about the incident, Gonzalez said.

Monday, Gonzalez filed a \$10 million claim against the City of Madera, citing excessive force, negligence and violation of civil rights. The claim, Gonzalez said, was the family's notice of intent to sue.

"Filing a lawsuit in Federal Court allows us the opportunity to question the officers involved," Gonzalez said.

Earlier, Gonzalez said he would serve the complaint on the city, then the city would have 30 days to answer the complaint.

"At that point, we start getting information from the city," he said, "and can start asking for documents regarding the shooting incident, prior complaints and training of their officers."

In the federal suit, the family did not make any specific monetary demand, Gonzalez said, but are waiting until the trial to decide how much to ask for.

"We might simply let the jury decide the value of one lost son," he said.

Judge Anthony Ishii, who presided over the lawsuit regarding an 11-year-old Modesto boy accidentally shot by SWAT officers, has been assigned the case. Gonzalez was the attorney in that case, which settled for \$3 million, he said.

Torres was accidentally shot while handcuffed in back of a police cruiser by a Madera police officer, officially identified by the department Thursday as Marcy Noriega. The incident occurred after officers broke up a party in an apartment at 1920 North Schnoor Avenue. According to Bruce Praet, the attorney for the city, Noriega intended to subdue Torres' activity by using her Air Taser, a handgun-like weapon which delivers 50,000 volts of electricity. Instead, the officer drew her service weapon, a 40-caliber Glock 23, and shot Torres in the chest, killing him.

Initially, two officers responded to the call, according to Praet. When they arrived at the scene, the subjects inside the apartment threw objects out the windows at the officers, shouted obscenities and refused to cooperate, he said.

Because of the nature of the situation, back up officers were called. Eventually, officers also requested outside assistance from the Madera County Sheriff's Department, Praet said.

Liquid dish soap had been poured on the linoleum around the apartment doorway, Praet said. He added that the officers found open consumption of alcohol and marijuana inside the apartment.

Noriega was Watch Commander that night, Praet said, and responded to the request for back up. Minors who were at the party were sent home with parents, and three adults — including Torres — were taken into custody.

According to Praet, only three other incidents - where weapons were mistaken for Tasers - have been reported nationwide. One in Sacramento, one in Rochester, New York and the other in Tallahassee, Florida. In all three incidents, the subjects sustained non-fatal injuries.

"There's no question there's liability here," Praet said. He said the City will offer a fair settlement in the case, and will work to establish the incident "for what it is — a tragic accident."



## Lawsuit Filed

The Torres family filed a lawsuit in Fresno on Thursday, claiming the Madera Police Department violated the constitutional rights of Everardo Torres.

Madera police say an officer mistook her pistol for a taser, shooting and killing Torres in the back of a patrol car.

Along with the civil suit, the Torres family says they will continue to pursue criminal charges against the officer.

Toxicology reports on Torres show he had a blood alcohol level at two times the legal limit. Torres also had THC in his system, the active ingredient in marijuana.

The Torres family attorney says the test results are not relevant.

Last Updated: Nov 7, 2002

## Claim targets Madera police

**Family alleges excessive force in man's fatal shooting.**

By Lisa Aleman-Padilla  
The Fresno Bee

(Published Tuesday, November 5, 2002, 5:50 AM)

MADERA, CA -- Family members of a handcuffed man shot and killed by a police officer filed a \$10 million claim against the city Monday and will seek at least that amount in a federal lawsuit later this week, their attorney said.

The Madera Police Department, officer Marcy Noriega and other officers present when 24-year-old Everardo Torres was killed are named as defendants in the letter sent to City Administrator David Tooley by attorney Arturo Gonzalez.

Noriega shot Torres, a professional boxer, in the chest Oct. 27 after he was arrested and allegedly began kicking at the rear windows of a police cruiser.

Noriega, who was trying to break up a party at a Madera apartment complex, told investigators she intended to fire her Taser and subdue Torres but mistakenly grabbed her handgun.

"We feel that what happened in this case is incredibly egregious," Gonzalez said Monday. "We are confident that any reasonable juror who looks at this case will agree."

The city of Madera has 45 days to accept or reject the claim. If the claim is rejected, Torres' family can sue in state court.

But Gonzalez said he plans to file a federal lawsuit this week.

"I don't want to wait 45 days; I want to get our investigation started," he said.

Bruce Praet, the attorney handling the case for the city, said he hopes to work directly with Gonzalez to reach "an equitable resolution of this claim for everyone involved."

He said Acting Police Chief Steve Frazier has invited the FBI to review the incident.

Monday's claim letter, filed on behalf of Torres' parents, Maria and Melchor Torres of Madera, says Torres' arrest, and entry by police into the apartment where the party was occurring was illegal. It says the officers used "excessive and unreasonable force in negligently/intentionally/maliciously dealing with Torres" and violated his civil rights.

Gonzalez said the use of a Taser on Torres inside the apartment, officers' refusal to loosen Torres' handcuffs and the fatal shooting outside the Madera Villa Apartments qualify as "unreasonable force."

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Gonzalez also said the city was "aware of its officers' inadequate training and supervision as well as their tendency to use excessive force but failed to take steps to correct these problems."

The city "may have also been negligent or reckless in the hiring of said officers and in their failure to discipline them or their peers for prior acts of misconduct," the letter says.

Last week, Madera District Attorney Ernie LiCalsi, whose office is independently investigating the shooting, said he also was looking into an earlier and unrelated possible incident of excessive force by a Madera police officer on a handcuffed suspect. He said results of that investigation would be available soon.

Gonzalez, a partner with the law firm Morrison & Foerster in San Francisco, has represented a number of Central Valley families in high-profile cases, winning substantial sums for many of them.

In 1993, he won a \$1.45 million verdict on behalf of four Dinuba women who were unlawfully strip-searched after their arrests at a school board meeting. In 1999, he won a \$12.5 million verdict for the family of a farmworker who was shot and killed by Dinuba police officers during a SWAT raid.

He settled a case this year for \$3 million for the family of an 11-year-old Modesto boy shot and killed in his home by a Modesto Police Department SWAT team member.

Fresno Bee reporter Charles McCarthy contributed to this report. The reporter can be reached at [lapadilla@fresnobee.com](mailto:lapadilla@fresnobee.com) or 675-6805.

## **Officer Claims Accident in Handcuffed Killing** **City Manager, Police Chief & District Attorney Knew of Complaints Regarding Officer** **Story & Photos by Jack Porter**

**Madera** - Madera Police Officer Marcie Noriega claims she meant to draw her department issued Taser Stun Gun when she shot and killed Everado "EV" Torres (22) Sunday evening.

Torres who was arrested following a World Series game seven party being held in an apartment in the Madera Villa Apartment complex in northwest Madera for evading arrest and according to Noriega conspiracy to injure a police officer.

An hour after he was placed in the back of a Madera Police squad car with his hands cuffed behind his back he lay mortally wounded, from a .40 caliber bullet fired from the Madera Police Officer.

In a press conference held Monday in the city council chambers at Madera City Hall, acting police chief, Commander Steve Frazier admitted that the officer drew the wrong weapon.

"My thoughts are with the Torres family. This was a tragedy", Frazier told local television cameras and reporters from all of the areas newspapers.

Absent from the press conference were the city administrator David Tooley and every member of the city council.

Frazier was reluctant to show reporters what a standard issues M-26 Taser pistol looked like. Madera Online asked the acting chief to produce one, which he refused. When fellow reporters from TV channels 30 and 24 requested to see one, Madera's interim chief obliged. When asked to put it against a Glock 23 handgun which is standard issue to Madera Police officers Frazier refused. "My weapon is loaded", Frazier told Madera Online. When Madera Online reminded the chief he could unload it, he refused to allow the comparisons.

Local gun dealer Zak Zacharia showed Madera Online what the standard issue Glock 23 service weapon look like and allowed us to take photos of the handgun. The weapon holds 13 rounds in the magazine and one in the chamber. It is much smaller than the standard issue M-26 Taser pistol Madera patrol officers carry. It is preferred by law enforcement for it's lightness and accuracy.

The M-26 Taser pistol officers carry is bulkier than the Glock. It's grip is wider and does not have the form fitted finger moldings that is standard on the Glock. The muzzle is nearly twice the size of the muzzle on the Glock and it is painted bright yellow. Zacharia didn't understand how the officer could have confused the two weapons.

Frazier would not speculate on how the shooting happened. Frazier claims the both hand guns have the same grips. But from the photos of both weapons shown above, only the Glock has a finger formed grip. Fresno firearms expert Bill Mayfield told local television news reporters, "You're not looking at the gun, your looking at the action... so, it would be quite easy for someone to pull a gun like device that feels very similar to a firearm out and it would be over before you realize it."

A photo shot of officer Marcie Noriega by Madera Online taken just minutes before the fatal shooting of Torres shows the position of her service weapon and Taser weapon. The Taser is on her thigh about three inches from her knee. Her Glock hand gun is on her waist towards her back. The actual distance between both weapons is nearly one foot. Noriega's action on pulling her service pistol would be towards the back and her action on pulling her Taser would be to reach down.

A complaint was filed against Officer Noriega in 2001 for filling a false police report. That complaint was given to then Madera Police Chief Jerry Noblett and Madera City Administrator David Tooley.

Video taped evidence showed that Officer Noriega and other Madera Police officers had manufactured an allegation of reckless driving against a local businessman. Other than an internal investigation headed up by Sergeant Robert Salas and then Sergeant Steve Frazier, Tooley and Noblett refused to take action against Noriega.

The complaint was also forwarded to Madera County District Attorney Ernie LiCalsi and each member of the current Madera City Council. No action was taken.

Frazier said this shooting could be a career-ending event for Officer Noriega but would not comment if criminal action would be taken against the officer or any of the other officers at the scene.

Noriega has been unavailable for comment and has returned to her hometown of Chico, California.

Everado Torres was an up and coming young boxer in the area. He recently competed in his second professional fight at one of the area's local casinos. Family and friends will be putting on a car wash to help pay the \$2500 needed for funeral expenses.

## **Parents of man shot by police file claim**

November 6, 2002 Posted: 04:15:12 AM PST

THE ASSOCIATED PRESS

MADERA -- The parents of a man shot and killed by a police officer while sitting handcuffed in a police car have filed a \$10 million claim against the city.

An attorney for the parents of Everardo Torres said he also plans to file a federal lawsuit this week.

"What happened in this case is incredibly egregious," said attorney Arturo Gonzalez, who represented the family of 11-year-old Alberto Sepulveda of Modesto, who was accidentally shot and killed by police during a drug raid in September 2000.

In Maria and Melchor Torres' claim letter filed Monday, the couple accuses officer Marcy Noriega and other officers of using excessive and unreasonable force when dealing with their son while breaking up a party Oct. 27.

Noriega accidentally pulled out her handgun instead of her Taser and shot Torres in the chest to stop Torres from kicking out the police car's rear window, Interim Police Chief Steve Frazier said.

Torres, 24, had been booked on suspicion of resisting arrest, police said.

Madera's lawyer said he hopes to reach an equitable resolution with the parties involved.

The FBI may also investigate, Madera police said.

In June, the city of Modesto settled with the Sepulveda family for \$2.55 million. Earlier this year, the federal government agreed to pay the family \$450,000. The police raid on the home was at the request of federal drug agents.



## Family of police victim plan lawsuit

By Daniel Rodriguez

Vida en el Valle

*(Published Wednesday, November, 6, 2002 11:08AM)*

MADERA -- Police officer Marcy Noriega, who stands accused in the shooting death of Everardo Torres, is described as various residents in the community as a person who carried out her duties with a less-than-positive attitude and whose career record might reflect other negative incidents. Torres received a fatal gunshot to the chest, which went through his heart and liver when Noriega confused her M26 Taser with her Glock 23 handgun.

"I have heard that she has had problems before but I have no proof, said attorney Arturo González. "That is why we are going to file a suit against her. I do not want to wait until the conclusion of the internal investigation by the Madera Police Department (which is said to conclude in 3 months). Once this suit is filed, we can begin our own investigation and, in fact, interrogate the accused ourselves."

Torres, 24, was fatally wounded the night of October 27th when police were called out to the Madera Villa apartments, located at 2100 N. Schnoor, where, apparently, a loud party was going on and neighbors had complained. Upon arriving, the police found Torres sitting on the floor. "They asked him his name and when he refused to tell them, they handcuffed and arrested him," said Jesús Rueda, who attended the party.

Torres struggled and police "started to shock him with their guns. We told them not to do that and one of the girls (who was identified as Erica), intervened but was arrested herself." Rueda said that with all the shocks Everardo received he was unable "to talk or scream. He desperately opened his mouth due to the agonizing pain he felt. If he moved at all, it was due to that." He pointed out that many of the officers standing around "laughed at his facial expressions...."

Torres remained in a patrol car for 30 to 40 minutes while officers gathered the necessary information for their report. Apparently Torres was attempting to get out of the patrol car, while handcuffed, by hitting the windows when Noriega, in an attempt to calm him with her taser, fired a shot.

"It could have been intentional or a mistake", says González, "and that is why we want to file suit as soon as possible so we can get started on our investigation."

"He was killed 'execution style'," said Carlos Torres, cousin to the deceased.

According to the interim police chief in Madera, Steve Frazier, taser guns are similar to a Glock 23, which is the official gun used by the department, even though the taser gun is longer due to its integrated battery pack and 10 ounces lighter than a conventional gun. The Madera Police Department has turned over the case to the county's district attorney's office.

"The district attorney is quite close to the police department and we want all the evidence as soon as possible," said González, who pointed out that 3 private investigators are already gathering the necessary information. González isn't disclosing the details of the suit at the moment. "What we want is justice."

With over a dozen similar cases to his credit, which have netted over 20 million dollars, González says that what is most important is to "avoid this from happening somewhere else because, frankly, I feel sad that these things happen so frequently in the Latino community. I have seen similar cases in Fresno, Merced, Stockton, Modesto, everywhere." Through their lawyer, the Torres Family has asked Bill Lockyer, the state's District Attorney, to conduct an independent investigation of the incident. "This will be turned over to the Crimes and Civil Rights division," Hallye Jorday, spokesperson for Mr. Lockyer, informed.

Everardo Torres, who was an amateur boxer for several years and dreamt of making it as a professional, was buried in Madera Cemetery last Thursday.

Send e-mail to: [danielr@vidaenelvalle](mailto:danielr@vidaenelvalle)

# Madera Tribune.com

## \$10 million claim against city

Monday, November 4, 2002

By Glenna Jarvis

A claim for \$10 million was filed against the City of Madera Monday by Arturo Gonzalez, attorney for the family of 24-year-old Everardo Torres. Torres was shot and killed on Oct. 27, when a Madera police officer accidentally drew her service weapon instead of an Air Taser.

According to Bruce Praet, attorney for the City of Madera, the \$10 million claim cited negligence, excessive force and violation of civil rights. The claim was filed on behalf of Torres' parents, Melchor and Maria Torres, and two brothers, Ramon and Melchor, Jr.

"What happens is, any time there is a claim of excessive force, the federal court allows it in under the Civil Rights Act," Praet explained. "Under Search and Seizure. The ultimate seizure is the taking of human life. But it has to be unreasonable. The truth is, an accidental shooting does not rise to the level of civil rights violation."

Nonetheless, Praet said the city hopes to work with Gonzalez in an effort to reach an equitable resolution for everyone involved.

Gonzalez said that, under no circumstances, would the family settle the case without a thorough investigation by his firm.

"If the city just called and said, okay, we'll give you \$10 million if you will go away, we won't go away," Gonzalez said. "We want the answers. Our clients couldn't sleep at night if this should happen to someone else, God forbid."

Gonzalez continued, "The point we're trying to make here is, this is a very significant case. Although for some people \$10 million may seem like a great deal of money, it doesn't begin to scratch the surface of the damage that has been caused to this family."

Gonzalez said he personally wants to question — under oath — everyone involved with the incident.

"The family has two goals," Gonzalez said. "Compensation for their loss, and most importantly to find out how this could have happened so that we can make whatever changes necessary to prevent this from happening again."

According to the claim, jurisdiction over the case will lie in the U.S. District Court for the Eastern District of California. The claim cites "general, special, and punitive damages according to proof" in excess of \$10 million.

Meanwhile, though the investigation had already been turned over the Madera County District Attorney's office, the FBI has been invited to conduct an independent review of the officer involved shooting, according to Praet.

"Because the city want's a full and open review of this entire incident, Chief (Steve) Frazier felt it would be appropriate to ask the FBI to conduct an investigation, as well," Praet said.

On the average, Praet said, investigations conducted by the DA take anywhere from 30 to 90 days to complete. Investigations conducted by the FBI take a little longer, he said.

"The FBI relies, in part, on the local investigation," Praet said. "I would expect their findings would not come for perhaps as much as six months."

Gonzalez said he had mixed feelings about the FBI conducting an investigation.

"On the one hand, if someone is going to come in and do a fair and impartial investigation, fine," he said. "What we have found is when one law enforcement agency investigates another law enforcement agency, it can be difficult to get an impartial result. We've decided after a lengthy conversation with the family that regardless of who investigates, we need to do our own, we need to question the parties involved ourselves."

"Although we certainly intend to wait until all the facts come in through the various investigations, preliminary information indicates this was strictly a tragic accident," Praet said.

Anyone who has information or evidence to indicate the incident was anything other than an accident, Praet strongly encourages them to contact the District Attorney's office, the FBI or the Madera Police Department.



MADERA, Calif. (AP) - The parents of a man shot and killed by a police officer while sitting handcuffed in a police car have filed a \$10 million claim against the city.

An attorney for the parents of Everardo Torres said he also plans to file a federal lawsuit this week.

"What happened in this case is incredibly egregious," Arturo Gonzalez said.

In Maria and Melchor Torres' claim letter filed Monday, the couple accuses Officer Marcy Noriega and other officers of using excessive and unreasonable force when dealing with their son while breaking up a party on Oct. 27. Noriega accidentally pulled out her handgun instead of her Taser and shot Torres in the chest to stop Torres from kicking out the police car's rear window, Interim Police Chief Steve Frazier said.

Torres, 24, had been booked on suspicion of resisting arrest, police said.

Madera's lawyer said he hopes to reach an equitable resolution for parties involved.

The FBI may also investigate the incident, Madera police said.

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## Conduct of Madera officers examined

**Inquiry into Sunday's death includes similar police shootings.**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Saturday, November 2, 2002, 5:41 AM)*

MADERA -- The Madera County District Attorney's Office was investigating the alleged beating of a handcuffed suspect by a Madera police officer when another officer shot and killed a handcuffed man late Sunday.

The first investigation started about a month ago and is nearly complete, said Madera County District Attorney Ernie LiCalsi. Details weren't available, but an officer allegedly struck a suspect several times after the suspect was in custody and restrained.

The Madera police chief asked for the investigation after receiving complaints from other officers at the scene, LiCalsi said. The officer in question, who wasn't identified, remains on administrative leave.

The second investigation deals with Sunday's shooting of Everardo Torres, killed as he sat in the back of a police cruiser. Officer Marcy Noriega told investigators she shot Torres in the chest accidentally, intending to use her Taser because Torres was kicking at the car's window.

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

LiCalsi said part of the Torres investigation includes the review of similar shootings.

One happened last year, when Sacramento police shot a 38-year-old handcuffed man in the buttocks during a struggle outside a convenience store. The man had shattered a rear window and injured an officer while in the back of a squad car.

The suspect survived, and police called the shooting accidental. The Sacramento County District Attorney's Office agreed after conducting its own investigation and did not file criminal charges against the officer.

But the Sacramento Police Department did make policy changes after the shooting, LiCalsi said.

"As a result, Sacramento officers don't wear Tasers where they used to," he said.

LiCalsi said he is waiting for information on a similar case that occurred in Rochester, N.Y., possibly as recently as last month.

Meanwhile, Madera police have halted their criminal investigation into Sunday's shooting, but will continue an internal investigation.

LiCalsi said police department officials chose to back out to avoid any possible conflicts of interest: "We felt it was the best way to handle it."

The state Attorney General's Office, asked to investigate earlier this week by Torres' family, hasn't decided whether it will conduct an inquiry. LiCalsi said he will cooperate with state officials if they decide to look into the shooting.

"The integrity of this investigation is of the utmost importance to me," he said.

The local investigation could take nearly three months to complete as district attorney investigators interview witnesses, pore through physical evidence and investigate the backgrounds of Noriega and Torres, LiCalsi said. Analysis of the patrol car where Torres was shot has begun, he said.

The reporter can be reached at [lapadilla@fresnobee.com](mailto:lapadilla@fresnobee.com) or 675-6805.

## Madera man's shooting questioned by experts

**Force used by officer was probably not justified, some say.**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Thursday, October 31, 2002, 4:58 AM)*

The shooting of a handcuffed suspect inside a patrol car by a Madera police officer was probably not justified, authorities on the use of force said Wednesday.

"Usually when someone is under control, there's no justification for any force," University of North Carolina criminology professor Geoffrey Alpert said.

The officer, Marcy Noriega, said she intended to use a Taser, but mistakenly fired a bullet from her Glock 23 handgun into the chest of Everardo Torres Sunday night.

"Her story is not credible," agreed professor Lance Stell of Davidson College in North Carolina. "She would have recognized the difference; a trained officer would be able to distinguish between the two [weapons] in the dark."

Despite Noriega's claim that she reached for the wrong weapon, both professors said a key issue is the intended use of a Taser -- which fires 50,000 volts of electricity into a person's body -- on a suspect already handcuffed and in custody.

"Could he deliver a potentially lethal blow?" Stell asked. "It was certainly not a deadly threat. As a professional, a certain degree of self-control is expected."

Police said Torres, 24, had been kicking at the rear window of the police cruiser before he was shot by Noriega, who was working to shut down a party at Madera Villa Apartments on North Schnoor Avenue.

Arturo Gonzalez, an attorney representing the Torres family, said Torres had been locked in the car for more than 30 minutes before the shooting.

That fact alone is enough to raise an eyebrow, Alpert said.

"That just crosses the line between controlling a suspect and punishing a suspect," he said. "There was just no justification for leaving him in a car" that long.

Madera police have refused to comment on the shooting or the investigation, referring inquiries to attorney Bruce Praet of Santa Ana. Praet said he couldn't comment until Friday, when he expected to meet with city officials. Praet wouldn't release the department's policy manual dealing with the use of force.

Gonzalez said a Taser had been used on Torres less than an hour earlier while he was inside the apartment.

An autopsy completed Wednesday showed that Torres had no injuries other than a single gunshot wound that tore through his heart and liver. Toxicology reports on Torres will not be completed for another two weeks, said detective Mike Molsbergen, deputy chief coroner of Madera County.

A spokesman for Taser International said the lack of injury clearly related to a Taser doesn't mean police didn't hit Torres with the weapon before he died.

"If it didn't break the skin, there's a fair chance it didn't leave a mark," said Steve Tuttle, director of government affairs for the company.

Torres' death -- and the events surrounding it -- continue to haunt those who knew him.

One man called by police Sunday night to pick up his nephew from the same party said an officer there asked him whether he knew Torres.

"I only knew him by his nickname, 'E.V.,"' BiBi Hernandez said. "If I'd known it was E.V., I would have taken him home."

Hernandez said he arrived at the apartment about 10 p.m. and that Noriega appeared to be calm, as did Torres, who was already in the back of the patrol car, hands cuffed behind his back.

"There was no racket coming out of the car," he said.



Hernandez said he and his nephew left shortly before the shooting.

On Wednesday, he was still trying to understand how Noriega, a six-year department veteran, could have made such a mistake.

"She's had a gun for six years," he said. "She forgot where she had it?"

Noriega has not been available to comment and is on administrative leave pending an investigation by the Madera County District Attorney's Office.

The Torres family has requested that the state Attorney General's Office look into the case.

"We did receive the request from [Gonzalez]," said Hallye Jordan, spokesperson for Attorney General Bill Lockyer.

"It is being forwarded to the civil-rights and criminal law division."

Jordan said her office does not typically become involved in such cases unless there is a problem with a local investigation, such as a conflict of interest.

The Torres family said it is concerned about the ability of Madera district attorney investigators to be objective given their close association with the Madera police.

Officials at the District Attorney's Office did not return telephone calls Wednesday.

The reporter can be reached at [lapadilla@fresnobee.com](mailto:lapadilla@fresnobee.com) or 675-6805.

## **Taser used before gun**

### **Separate inquiries urged for dead Madera man**

By Lisa Aleman-Padilla

The Fresno Bee

*(Published Wednesday, October 30, 2002, 5:48 AM)*

MADERA, CA -- The Madera man shot and killed by a police officer late Sunday was subdued by a Taser before being handcuffed and locked in a patrol car, an attorney for his family said Tuesday.

An officer used a Taser on Everardo Torres, 24, during the initial raid on a party at the Madera Villa Apartments on North Schnoor Avenue, lawyer Arturo Gonzalez of San Francisco said.

"He had already been subjected to a substantial amount of electricity while inside the home," Gonzalez said, adding that a Taser discharges about 50,000 volts of electricity into a person's body. "It's enough to stop a person's heart."

Torres should have been taken to a hospital immediately after the Taser shooting, instead of being handcuffed and placed in the back of a police vehicle, Gonzalez said.

He said Torres spent 30 or 40 minutes in the car before being shot in the chest by officer Marcy Noriega. Madera Police Department officials say Noriega drew her handgun while intending to draw her Taser.

Gonzalez said his firm has begun its own investigation into how Noriega, a six-year veteran of the force, could have mistaken her Glock 23 handgun for a Taser M26 before firing the fatal shot into Torres' chest. Noriega's Taser was strapped to her thigh, while her handgun was strapped to her waist.

"No reasonable officer in the United States of America would grab a Glock pistol and think that it's a [Taser]," he said. "Police know what they're holding in their hands if they are well-trained."

A Taser shoots an electric charge that overrides the central nervous system and contracts muscles, momentarily incapacitating a person without causing permanent injury.

Torres, who was arrested at the party Sunday for resisting and delaying officers, began kicking at the rear windows of the police cruiser after he was handcuffed and placed inside, police said.

Torres should have been restrained with a Hobble device, a type of ankle cuff, if officers thought Torres continued to be a safety risk, Gonzalez said.

Even if the officer had pulled her Taser as she allegedly intended, it would still have qualified as "excessive force," he said. "There's no legal basis for using a [Taser] on a suspect who is handcuffed and in custody for misdemeanor violations."

Madera Police Department officials would not comment Tuesday on the shooting investigation or allegations made by Gonzalez, referring all media calls to attorney Bruce Praet of Santa Ana.

Praet said he couldn't comment on the case until Friday, when he expected to meet with city officials.

"I'm not trying to be evasive," Praet said. "I just don't know" details about the shooting.

He said, however, that he supports the separate investigation by the Madera County District Attorney's Office: "I think it is well-advised not only in this case, but in all cases."

Members of Torres' family, though, said they asked California Attorney General Bill Lockyer to investigate the shooting independently.

"The family is very concerned about whether local prosecutors can conduct an investigation given how closely they work with Madera Police Department," Gonzalez said.

It wasn't immediately clear whether state officials would intercede.

Gonzalez would not comment on possible legal action being considered by the Torres family.

"At this point, the family's focus is on putting 'Lalo' [Torres] to rest," he said.

Tuesday, friends and family held a car wash to raise money for Torres' funeral. Vearl Tibbs, a resident of Madera Villa Apartments, was one of the first patrons.

Tibbs, who lives near where Sunday's shooting happened, said he knew many of the young men attending the party that night. He said the party had not disturbed him and he was watching television at the time of the shooting.

"I'm doing what I can to help out the family," he said. "It was a tragedy."

A rosary for Torres will be recited at 7 p.m. today at Holy Trinity Funeral Chapel. Mass will be celebrated at 1 p.m. Thursday at St. Joachim's Catholic Church in Madera. Visitation will be from noon until 6 p.m. today, also at the chapel.

A memorial fund, account 2925924017, also has been set up at Wells Fargo Bank in Madera.

The reporter can be reached at lapadilla@fresnobee.com or 675-6805.

## Gun mistake fatal

**A Madera man, arrested in the aftermath of a loud party, is killed when an officer draws her pistol instead of Taser**

By Lisa Aleman-Padilla

The Fresno Bee *(Published Tuesday, October 29, 2002, 7:15 AM)*



MADERA, CA -- A Madera police officer reaching for a Taser mistakenly grabbed a handgun and fired a fatal shot into the chest of a handcuffed 24-year-old man while quelling a party late Sunday.

Everardo Torres of Madera died at University Medical Center in Fresno after the officer, a six-year veteran of the force and the shift's watch commander, tried to subdue Torres with an M26 Taser, but instead fired a shot with her department-issued Glock 23 handgun.

"They killed him execution style," cousin Carlos Torres said. "You don't want to wish this on anybody, to go from suspect to victim."

Madera interim Police Chief Steve Frazier said the officer intended to use her Taser to prevent Torres, who was handcuffed and in the back of the police car, from kicking out the vehicle's rear window. A Taser uses electricity to subdue its targets without permanent injury.

"A tragedy occurred here last night," Frazier said Monday. "I wish things could have been different."

[Madera police Commander Robert Solis shows the department-issued handgun, a Glock 23, left, and the M26 Taser. The Taser is made of plastic instead of metal, making it 18 ounces compared to the 28.5 ounces of a loaded Glock 23. \(John Walker / The Fresno Bee\)](#)

The officer, whose identity has not been released by the department, was put on administrative leave and could face criminal charges pending the results of investigations by the Madera Police Department and the Madera County District Attorney's Office.

"I think any time force is utilized it can be a career-ending event," Frazier said, adding that this was the first time the officer had drawn a weapon in six years with the department.

Frazier said another officer went to the Madera Villa Apartments, in the 2100 block of North Schnoor Avenue, about 8:15 p.m. when neighbors complained about a loud party.

Partygoers threw things at the officer and didn't allow him inside the apartment, Frazier said.

Frazier said all eight or nine officers on duty in his department were sent, along with at least two sheriff's deputies, when the first officer called for backup.

"It was a very unruly party," Frazier said.

"They were throwing things and doing things to hamper the police investigation."

Several teens who had been drinking at the party were sent home with parents, while Torres, an amateur boxer, and two others were arrested for resisting and delaying police officers.

Carlos Torres said Monday afternoon his family is still trying to understand why the officer wanted to use a Taser on Torres, who was already handcuffed and in the patrol car.

"She had nine officers around her," Carlos Torres said. "She wasn't in danger of anything."

He said his family, who have talked with an attorney, also wants to know how the officer could've mistaken her handgun for the Taser. "She had all the time in the world to react," he said.

Eric Wyatt, Madera County assistant district attorney, said the placement of both Torres and the officer when the shooting occurred is "only one factor" in the investigation.

"As a general rule of law, you are only entitled to use the force appropriate to protect you, others or property from harm," he said.

The Taser, manufactured by Taser International, shares some similarities with the department's handgun, the .40-caliber Glock 23, Frazier said.

Both weapons are strapped onto officers' thighs by holsters, and each is equipped with a laser to help officers lock in their targets.

"It looks like an oversized gun," he said.

He said the officer had the Taser strapped to her right thigh and had been authorized to use the weapon for about a year. It's uncertain where her handgun was strapped.

Jose Rojas, a representative for Taser International, said his company has not received any complaints about the similarities between the two weapons.

He said the Taser is slightly larger than a handgun to accommodate eight double-A batteries. It's also made of plastic instead of metal, making it 18 ounces compared to the 28.5 ounces of a loaded Glock 23.

A bright yellow marking also is evident along the side of the Taser, Rojas said.

Monday, friends and family recalled Torres' love of boxing and cheerful disposition.

Wes Hodgins, president of the Southeast Fresno Boxing Club, said Torres sparred at the club many times.

"I've known him since he was about 10," he said. "When he was a kid, he was a really nice boy. But this past year or so, he got away from boxing and started hanging with the wrong crowd."

Hodgins said a fight landed Torres in jail for a couple of weeks last year.

"He got involved in a fight that had nothing to do with him," Hodgins said.

Carlos Torres said his family was grieving and needs to raise money to pay for a funeral. A car wash is planned for today at Lake and D streets in Madera.

A memorial fund, account number 292592417, has also been set up at Wells Fargo Bank in Madera.

Staff writer Milo F. Bryant contributed to this report.

The reporter can be reached at lapadilla@fresnobee.com or 675-6805.

Police turn over investigation District attorney to probe shooting City retains an attorney from Los Angeles

**MERCED**  **SUN-STAR.com**

Wednesday, October 30, 2002

## **Police turn over investigation District attorney to probe shooting City retains an attorney from Los Angeles**

By Glenna Jarvis

The Madera Police Department has "backed away" from the investigation involving the shooting of an unarmed suspect by a police officer Sunday night and has turned the matter over to the District Attorney's office, according to Sgt. Ken Alley.

"We have totally backed out of it," Alley said. "After we finish a few interviews, we're forwarding everything to the DA."

Given the nature of the situation and the media attention it has drawn, Alley said allowing the DA to handle the investigation will dispel any fears of bias.

The department has also retained legal counsel, that of Bruce Praet of the law firm of Ferguson, Praet and Sherman of Los Angeles.

According to Alley, Praet is experienced in handling cases for municipalities.

Both Alley and Chief Steve Frazier have been advised not to speak with anyone regarding the incident, and Praet is expected to be in Madera Friday to review the case, Alley said.

In a telephone interview, Praet confirmed that he has been retained by the city, but declined to discuss the case in detail.

"I will say that the city has made this a top priority," Praet said. "They are conducting a complete internal review of everything, and have asked the District Attorney to make an independent review."

The suspect, 24-year-old Everando Torres, attended a party Sunday in an apartment at 2190 North Schnoor Avenue. The party, Frazier said during a press conference Monday, allegedly got out of hand and someone called the police.

When the officers arrived, several juveniles were sent home, and three individuals were taken into custody. Frazier said the occupants were "uncooperative," threw objects at officers and denied officers entry into the residence. Back up was requested from both the police and the sheriff's department, he said.

Eight or nine police officers and at least two deputies from the sheriff's department responded, he said.

Torres was one of those arrested, and he was cuffed and placed in the back of a patrol vehicle. He became disruptive, and attempted to kick out the vehicle windows, Frazier said.

When the officer, whose identity is being withheld, tried to subdue Torres by using an air taser, she accidentally grabbed her service weapon, a 40-caliber Glock 23 and shot Torres once in the chest, Frazier said.

Officers attempted first aid, he said, and Torres was transported to University Medical Center in Fresno where he was pronounced dead.

Frazier said his thoughts and prayers were with the Torres family, and defined the incident as a "terrible tragedy."

This is the first time the officer has drawn a weapon in the line of duty during her six years with the department, Frazier said. She wore the taser in a thigh holster just below the Glock, in a holster attached to her utility belt, Frazier said.

## **Police officer accidentally kills suspect**

Wednesday, October 30, 2002

By Glenna Jarvis

MADERA – A 24-year-old Madera man was fatally shot Sunday night when a Madera police officer accidentally drew her service pistol instead of her air taser and shot the man in the chest, according to Interim Police Chief Steve Frazier.

The officer, identified only as a female, has been placed on administrative leave pending two investigations – one by the police department and one by the District Attorney's Office.

The man has been identified as Everando Torres, a welder and a professional boxer, according to reports.

Frazier said, "It is always our intent to use the least amount of force possible. ... Our thoughts are with the Torres family. Our hopes and prayers go out to them."

The shooting occurred after the officer responded to a call about a disturbance at an apartment complex at 2190 N. Schnoor Ave. A party was under way, and eight or nine other officers responded to a request for assistance.

Police sent several juveniles home and made several arrests, Frazier said.

Torres was handcuffed and placed into a patrol vehicle. He then attempted to kick out the vehicle windows, Frazier said, and at that point, the officer drew her service pistol and fired into Torres' chest, Frazier said.

First aid was rendered immediately, Frazier said, and Torres was taken to University Medical Center, where he was pronounced dead.

Two other people were taken to the Madera County Department of Corrections, where they face charges of resisting and delaying a peace officer.

Frazier said that the officer who shot Torres has been with the department for six years and that this was the first time she had drawn a weapon in the line of duty.

"She is very upset and distraught over what has occurred," Frazier said. "She'll probably be OK, but she's very upset, as we all are."

Deputy District Attorney Eric Wyatt said that if the police department investigation finds the officer was at fault, that investigation will be turned over the district attorney's office for possible prosecution.

He said that if his office finds the officer was at fault, that information will be forwarded to the state attorney general to determine what charges should be filed.

Frazier said, "Any time force is utilized, it can be a career-ending action."

An air taser is an electrical device designed to subdue unruly subjects. It shoots two darts attached to a wire, and electrical current carried over the wire attacks the central nervous system.

The weapon resembles a handgun and is worn in a thigh holster, Frazier explained. In this case, he said, the officer wore the taser on her right thigh, just below her department- issued Glock 23, a 40-caliber semi-automatic handgun.

"The taser looks like an oversized gun," Frazier said. It is black, just like the Glock, but it is slightly heavier. The taser has white or yellow markings on the sides in an attempt to distinguish it from a handgun.

Both the taser and the Glock have laser sights.

Officers were issued the air tasers about a year ago, and all but one of the 52 sworn officers at Madera Police Department carries a taser, Frazier said.

This is the second shooting involving an officer in the past four months. The department went for 10 years without any such incidents. This past summer, in the first incident, an investigation determined that the officer's actions were justified, Frazier said.

MADERA TRIBUNE



## Slain Madera man's family to sue

Thursday, October 31, 2002

The family of a Madera man who was mistakenly shot and killed by police held a viewing Wednesday night, when mourners filed into a Madera chapel to say their good-byes.

Everado "Evie" Torres, 24, was accidentally shot and killed Sunday night as he sat handcuffed in the back of a police car. According to public reports, six-year police veteran Marcie Noriega mistook her handgun for a taser that she meant to use to subdue Torres after a rowdy party. Autopsy results released Wednesday show Torres was shot once with a bullet that pierced his heart and liver.

Torres's family has hired attorney Arturo Gonzalez, who said he will file a lawsuit in federal court as early as next week. Noriega is on paid administrative leave.

KSEE24.com Supplement

## Officer accidentally kills man

Tuesday, October 29, 2002



Madera CA police officials say a 22-year-old man is dead because an officer mixed up her taser with her gun.

The officer was one of at least two officers to respond to a noise complaint at the Madera Villa Apartments at about 8:30 p.m. Sunday. Two officers entered an apartment where residents were having a party. Police arrested a few people and pulled taser guns on others. Everado Torres, 22, was arrested and put in the backseat of the officers' patrol car when he started kicking the car's window, a witness said. One of the officers reached for her taser but inadvertently pulled out her service

weapon and shot Torres.

A police official said the officer wore her taser on her leg, near her gun. The official wouldn't identify the officer by name, but said she has been with the department for six years.

The police department and the District Attorney's office are investigating the shooting. The officer is on paid administrative leave, according to standard procedure.



## Deadly Mistake

An investigation is underway into an officer involved shooting that left a suspect dead. What sets this apart from recent similar incidents is the suspect was handcuffed in the back of a police vehicle.

Police were called to an apartment complex on Schnoor near Avenue 16 in Madera around 9:00pm Sunday night. There was a loud party with lots of complaints from neighbors, but it was a routine call that was turned into a tragedy by an officer's apparent mistake.

An angry 24 year old, Everado Torres, was put inside a Madera Police patrol car. Police say he went wild in the police car. A female officer was going to use her taser on him.

A taser is an electronic stun gun which is seen as a fairly safe way to subdue someone with a brief electrical shock.

Madera Police Chief, Steve Frazier, says something went wrong, "One of the individuals, while in the back of the patrol car, was in the process of kicking out the windows. Officers went to employ a taser, and inadvertently pulled their service weapon and shot the suspect."

The chief would not speculate on how it happened. While the Glock pistol Madera Police carry and the Taser guns look different, their plastic handles feel the same.

Fresno firearms expert, Bill Mayfield, says that could have been the problem, "You're not looking at the gun, you're looking at the action... so, it would be quite easy for someone to pull a gun like device that feels very similar to a firearm out and it would be over before you realize it."

Police departments are under a lot of pressure to use non-lethal force in cases. Tasers are one way to do that.

The officer involved in the shooting has been on the Madera Police force for about 6 years. The department started using tasers about a year ago. She has been placed on administrative leave.

Last Updated: Oct 28, 2002

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Police departments are under a lot of pressure to use non-lethal force in cases. Tasers are one way to do that.

The officer involved in the shooting has been on the Madera Police force for about 6 years. The department started using tasers about a year ago. She has been placed on administrative leave.

### **Family Hires Attorney**

The Torres family has already hired an attorney who says he will sue the city of Madera over the shooting.

Arturo Gonzalez says the family first wants a fair criminal investigation into why Torres was shot and killed while handcuffed in a police car. He also believes the family deserves compensation from the city.

Gonzalez says the family will soon file a civil lawsuit.

Last Updated: Oct 31, 2002

## D.A. Investigates

More fallout from the killing of a Madera man in police custody.

The Madera County district attorney is taking over the investigation of the fatal shooting.

Madera's police chief called Everado Torres' death a mistake. He says the officer meant to use her taser gun but accidentally shot Torres in the chest.

Assistant district attorney, Eric Wyatt, says county prosecutors are now trying to determine if the officer who fired should be criminally charged, "We feel it's important for our office to overtake this investigation to do that. So that everyone in the community is assured it's not a biased result."

The attorney for the Torres family is asking the state attorney general to take over the investigation, but he is not likely to intervene.

Last Updated: Oct 30, 2002

[fresnoBee.com](http://fresnoBee.com)

## Madera officer fatally shoots 22-year-old

By Lisa Aleman-Padilla The Fresno Bee *Published 10/28/02 15:25:00*

MADERA -- A Madera police officer who grabbed a handgun instead of a taser fired a fatal shot into the chest of a 22-year-old Madera man while dealing with a noise disturbance Sunday night at an apartment complex on North Schnoor Avenue, police said.

Everado Torres, 22, of Madera was pronounced dead at University Medical Center in Fresno.

The officer, whose name was not released, is on paid administrative leave pending investigations by the Madera Police Department and Madera County District Attorney's office, said Madera Police Chief Steve Frazier.



Officer makes fatal error, shoots suspect

October 29, 2002

By LISA ALEMAN-PADILLA

THE FRESNO BEE

MADERA -- A Madera police officer reaching for a Taser mistakenly grabbed a handgun and fired a fatal shot into the chest of a handcuffed 24-year-old man while quelling a party late Sunday.

Everado Torres of Madera died at University Medical Center in Fresno after the officer, a six-year veteran of the force and the shift's watch commander, tried to subdue Torres with an M26 Taser, but instead fired a shot with her department-issued Glock 23 handgun.

"They killed him execution-style," cousin Carlos Torres said. "You don't want to wish this on anybody, to go from suspect to victim."

Madera interim Police Chief Steve Frazier said the officer intended to use her Taser to prevent Torres, who was handcuffed and in the back of the police car, from kicking out the vehicle's rear window. A Taser uses electricity to subdue someone without causing permanent injury.

"A tragedy occurred here last night," Frazier said Monday. "I wish things could have been different."

The officer, whose identity has not been released by the department, was put on administrative leave and could face criminal charges pending the results of investigations by the Madera Police Department and the Madera County district attorney's office.

"I think any time force is utilized, it can be a career-ending event," Frazier said, adding that this was the first time the officer had drawn a weapon in six years with the department.

Frazier said another officer went to the Madera Villa Apartments, in the 2100 block of North Schnoor Avenue, about 8:15 p.m. when neighbors complained about a loud party.

Partygoers threw things at the officer and didn't allow him inside the apartment, Frazier said.

All eight or nine officers on duty in his department were sent, along with at least two sheriff's deputies, when the first officer called for help.

"It was a very unruly party," Frazier said. "They were throwing things and doing things to hamper the police investigation."

Several teens who had been drinking at the party were sent home with parents, while Torres, an amateur boxer, and two others were arrested on charges of resisting and delaying police officers.

Carlos Torres said Monday afternoon his family is still trying to understand why the officer wanted to use a Taser on Torres, who was already handcuffed and in the patrol car.

"She had nine officers around her," Carlos Torres said. "She wasn't in danger of anything."

He said his family, who have talked with an attorney, also wants to know how the officer could've mistaken her handgun for the Taser.

"She had all the time in the world to react," he said.

The Taser, manufactured by Taser International, shares some similarities with the department's handgun, the .40-caliber Glock 23, Frazier said.

Both weapons are strapped onto officers' thighs by holsters, and each gun is equipped with a laser to help officers lock in their targets.

"It looks like an oversized gun," he said.

Jose Rojas, a representative for Taser International, said his company has not received any complaints about the similarities between the two weapons.

He said the Taser is slightly larger than a handgun to accommodate eight double-A batteries. It's also made of plastic instead of metal, making it 18 ounces compared to the 28.5 ounces of a loaded Glock 23.

A bright yellow marking also is evident along the side of the Taser, Rojas said.

## **News in brief from the San Joaquin Valley**

October 29, 2002

The Associated Press

MADERA, CA (AP) - Madera's police chief said an officer who fatally shot a handcuffed man while he was sitting in a patrol car accidentally pulled her handgun instead of her Taser to prevent him from kicking out the car's rear window.

Interim Police Chief Steve Frazier said the officer, a six-year veteran whose identity has not been released, was put on administrative leave.

Everardo Torres, 24, an amateur boxer, died at a Fresno hospital after the officer shot him Sunday night instead of stunning him with her Taser, a device that delivers an electrical shock.

Frazier said officers strap both guns and Tasers to their thighs, which could have led to the accident.

Torres and two others had been booked for resisting arrest after the officers came to investigate a loud party, police said.

Frazier said the officer could face criminal charges pending investigations by police and the Madera County district attorney.

"A tragedy occurred here last night," Frazier said Monday. "I wish things could have been different."



## **Police officer accidentally kills handcuffed suspect**

Thursday, October 31, 2002

By Special to the Enterprise



MADERA – A 24-year-old Madera man was fatally shot Sunday night when a Madera police officer accidentally drew her service pistol instead of her air taser and shot the man in the chest, according to Interim Police Chief Steve Frazier.

The officer, identified only as a female, has been placed on administrative leave pending two investigations – one by the police department and one by the District Attorney’s Office.

The man has been identified as Everando Torres, a welder and a professional boxer, according to reports.

Frazier said, “It is always our intent to use the least amount of force possible. ... Our thoughts are with the Torres family. Our hopes and prayers go out to them.”

The shooting occurred after the officer responded to a call about a disturbance at an apartment complex at 2190 N. Schnoor Ave. A party was under way, and eight or nine other officers responded to a request for assistance.

Police sent several juveniles home and made several arrests, Frazier said.

Torres was handcuffed and placed into a patrol vehicle. He then attempted to kick out the vehicle windows, Frazier said, and at that point, the officer drew her service pistol and fired into Torres’ chest, Frazier said.

First aid was rendered immediately, Frazier said, and Torres was taken to University Medical Center, where he was pronounced dead.

Two other people were taken to the Madera County Department of Corrections, where they face charges of resisting and delaying a peace officer.

Frazier said that the officer who shot Torres has been with the department for six years and that this was the first time she had drawn a weapon in the line of duty.

“She is very upset and distraught over what has occurred,” Frazier said. “She’ll probably be OK, but she’s very upset, as we all are.”

Deputy District Attorney Eric Wyatt said that if the police department investigation finds the officer was at fault, that investigation will be turned over the district attorney’s office for possible prosecution.

He said that if his office finds the officer was at fault, that information will be forwarded to the state attorney general to determine what charges should be filed.

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The weapon resembles a handgun and is worn in a thigh holster, Frazier explained. In this case, he said, the officer wore the taser on her right thigh, just below her department- issued Glock 23, a 40-caliber semi-automatic handgun.

“The taser looks like an oversized gun,” Frazier said. It is black, just like the Glock, but it is slightly heavier. The taser has white or yellow markings on the sides in an attempt to distinguish it from a handgun.

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Officers were issued the air tasers about a year ago, and all but one of the 52 sworn officers at Madera Police Department carries a taser, Frazier said.

This is the second shooting involving an officer in the past four months. The department went for 10 years without any such incidents. This past summer, in the first incident, an investigation determined that the officer’s actions were justified, Frazier said.