



INTEROFFICE MEMORANDUM

DATE: September 20, 2017 **PHONE:** (909) 382-3823

FROM: **David M. Hidalgo**
Supervising Deputy District Attorney
Central Criminal Division

TO: **Simon Umscheid**
Chief Deputy District Attorney

Mary Ashley
Assistant District Attorney

SUBJECT: Lethal Force Encounter - Officer Involved Shooting – Death

INVOLVED OFFICERS: Deputy Stephen Sullivant, Deputy Alfredo Lopez

INVOLVED AGENCY: SBSB – Central Station

DECEASED PARTY: Michael David Russo, DOB: July 19, 1985 - Residence:
Riverside, California

VICTIMS: Deputy Stephen Sullivant – SBSB – Central Station, Deputy Alfredo
Lopez – Central Station/San Manuel Casino

DATE AND TIME OF INCIDENT: February 1, 2017, 7:53 PM.

INVESTIGATING OFFICER: Detective Arturo Alvarado, SBSO – Homicide Detail

SHERIFFS DR #: 771700141

SHERIFFS H#: 2017-013

DA STAR #: 2017 - 34403

FACTUAL SUMMARY OF CASE

On Wednesday February 1, 2017, at approximately 7:53 PM, San Bernardino County Sheriff's Department Central Station received an Automated License Plate Reader Alert of a stolen vehicle at the intersection of Highland and Victoria Avenues in San Bernardino, CA. possibly headed into the San Manuel Indian Resort and Casino. Sheriff's Deputies Stephan Sullivant and Alfredo Lopez from the Sheriff's Central Station responded to the location to investigate. Prior to their arrival, San Manuel Casino Department of Public Safety Officers located the subject stolen vehicle inside the parking structure of San Manuel Casino located at 777 San Manuel Blvd. in Highland, California and notified responding deputies.

Deputies Stephen Sullivant and Alfredo Lopez located the un-occupied vehicle on the 4th level of parking lot structure #2 of the casino. A decision was made to place "Rat Trap" tire deflating devices under the vehicles tires and set up surveillance of the vehicle and wait for the occupants to return. The tactical plan was for Deputy Lopez to remain in his patrol vehicle to conduct a felony traffic stop if necessary and Deputy Sullivant would approach on foot. Both were to arrive simultaneously and apprehend the suspects prior to them entering the car. Earlier surveillance video captured the suspect gray Nissan Altima arriving at the Casino parking structure and a male and female exiting the vehicle and entering the casino. Their clothing description was given to Deputies.

A short time later, the same female subject, later identified as and Sirikul Sawasdikul – AKA: Ath Pen, was observed walking to the vehicle and waiting at the passenger side driver's door. Moments later, the male suspect, later identified as Michael Russo, was seen walking toward the subject vehicle. Russo arrived at the driver's side of the vehicle and used the vehicle's automatic key lock to open the vehicle. Both he and Sawasdikul entered the vehicle. A white Nissan Altima simultaneously arrived at the location and waited next to the gray Altima, waiting to take the parking space.

Deputy Stephen Sullivant left his surveillance location in a stairwell of the parking structure and ran toward the suspect vehicle. He approached the driver's side door with his gun drawn. Deputy Sullivant opened the door and reached in to grab Russo, yelling

"hands, let me see your hands, hands, hands, hands." As Deputy Sullivant was at the driver's side door of Russo's vehicle, Deputy Alfredo Lopez drove his patrol unit with emergency lights on to Sullivant's location and stopped just behind and to the right of Russo's vehicle. Russo then rapidly accelerated the vehicle backwards out of the parking space as Deputy Sullivant was grabbing at him trying to pull him out of the vehicle.

As Russo accelerated the vehicle backward, Deputy Sullivant was pinned between the door and door frame of the vehicle and dragged backwards approximately 20 feet. Deputy Sullivant was shocked he was not run over and underneath the car and believed Russo would kill him. Russo accelerated backwards out of the parking space until he rammed the front end of Deputy Lopez's patrol unit with the rear end of his vehicle, knocking the patrol unit backwards. The open driver's door struck Deputy Sullivant in the back and caused him to hit the door frame. Deputy Sullivant was still trying to stop Russo grabbing at him inside the vehicle yelling, "Stop, stop, stop, stop, stop," however Russo accelerated forward causing Deputy Sullivant to fire one shot at Russo through the opened driver's door.

Russo then struck the white Nissan waiting to take his parking spot. The white Nissan backed away. Russo backed up and then accelerated forward just as Deputy Sullivant tried to open the door that was now locked. Sullivant then fired a second shot into the driver's side door, shattering the driver's side window. Russo drove head onto the white Nissan, pushing it backwards as he turned and then fled down to the third level of the parking structure. As he fled, witnesses estimated Russo's speed to be between 60-70 mph. Deputy Sullivant ran after Russo's vehicle, lost it, and returned to his patrol unit to pursue Russo. Deputy Lopez also followed pursuit; however, both were unaware of the location of Russo's vehicle until they monitored radio traffic of a collision on the 3rd floor of the parking structure.

After entering the 3rd level of the parking structure, Russo apparently lost consciousness from his gunshot wounds and crashed into several parked and unoccupied vehicles. Deputies located the collision site and Russo was found slumped over onto the passenger's seat unresponsive. The female passenger, Sawasdikul, was pinned in the

vehicle and screaming. Both were eventually extricated and treated by responding medical personnel. Deputies checked Russo for a pulse, however did not feel one. It was believed Russo was deceased at the scene. Paramedics arrived and attempted to resuscitate him.

Russo and Sawasdikul were transported to local hospitals for further treatment. Michael David Russo was transported to and arrived at St. Bernadine's Hospital in San Bernardino at 2134 hours in full arrest. He was re-intubated, however did not respond to resuscitation efforts and remained pulseless. Russo was pronounced deceased at 2156 hours by hospital Dr. T. Reilly. He sustained two gunshot wounds, one to his left bicep and a second to his left torso area. Russo later succumbed to the gunshot wound penetrating his left torso area.

Sirikul Sawasdikul was transported to LLUMC with injuries to both legs and minor scrapes to her head. It was later determined she sustained a right broken leg, a small puncture wound to the left leg below the knee, and an abrasion to the right side of her face. Deputies Sullivant suffered an abrasion on the top of his right middle finger, an abrasion on the right side of his right little finger, and two abrasions on his left shin. There were no reported injuries to Deputy A. Lopez who was in the patrol unit Russo struck as he fled the scene. The civilian occupants/witnesses in the white Nissan struck by Russo did not report any injuries requiring medical treatment.

DECEASED SUSPECT INFORMATION

DECEASED SUSPECT: Michael David Russo - DOB: 07/19/1985

DESCRIPTION: Caucasian Male, Age 32 – Height: 5'7" – Weight: 210

CAUSE OF DEATH

San Bernardino Coroner's Case Number: 701700929

Riverside County Sheriff's Department/Coroner's Autopsy report number:

2017 - 0432

Name: Michael David Russo, age 32, male Caucasian

Time of Death: declared at 21:56 hours on Feb. 1, 2017

Time of Autopsy: 0900 hours, Feb. 3, 2017

Place of autopsy: Riverside County Sheriff's/Coroner's Facility, performed by Doctor M. Fajardo, MD, Forensic Pathologist. Detectives Arturo Alvarado and Brendan Motely from the SBSH Homicide Detail were also in attendance of the Autopsy at the Riverside County Sheriff's/Coroner's facility and documented the following: Dr. Fajardo located and removed one fired bullet from Russo's left lateral side. The round traveled through the left lateral side underneath the 5th rib, the left lung, the heart, the right lung, exited the chest cavity between the 4th and 5th ribs and lodging below the skin surface on the right bicep. Dr. Fajardo labeled this Gunshot #1. The second gunshot wound entered Russo's left bicep and exited the right side of his chest. The bullet did not enter the chest cavity. Dr Fajardo labeled this Gunshot # 2.

Dr Fajardo determined the cause of death to Michael David Russo to be the penetrating gunshot wound to the torso – Gunshot wound #1, death within minutes. On April 12, 2017, the Autopsy and case was presented to the San Bernardino County Coroner Review Board for discussion and determination of cause of death. After conclusion of the review, the board unanimously determined the manner of death to be a Homicide.

WEAPONS USED BY DEPUTY(S) INVOLVED IN SHOOTING

Deputy Stephen Sullivant: The duty firearm used by Deputy S. Sullivant was a Glock Model 21, Gen 4 – .45 Auto Caliber handgun. It was retrieved and placed into evidence. There was a loaded magazine in the weapon containing eleven (11) rounds one (1) round in the chamber. Deputy Sullivant also had two other .45 cal. magazines containing thirteen (13) rounds in each. Deputy Sullivant fired two shots at suspect Russo. One expended .45 cal. casing was located at the shooting incident location. A spent .45 cal. bullet was also recovered lodged inside the purse of Sirikul Sawasdikul located on the right front floorboard of the vehicle. Another bullet fragment was located and extracted from Russo's torso.

Deputy Alfredo Lopez: did not fire his service firearm.

SAN MANUEL CASINO PARKING STRUCTURE VIDEO SURVAILLANCE

VIDEO/DEPUTY SULLIVANT'S BELT RECORDING

There were three (3) operational cameras on the fourth floor of the San Manuel Casino parking structure that captured this officer involved shooting with Deputy Stephen Sullivant from three different cameras angles. The videos were matched and paired up with Deputy Sullivant's belt recordings of his radio transmissions of this incident. The following is a summary of the video surveillance of all three (3) cameras located in San Manuel Casino parking structure #2 - level 4:

Shortly before 8:48 pm, garage parking surveillance video depicts subject Sirikul Sawasdikul walking from the main casino on the fourth floor of the parking structure towards the stolen gray Nissan Altima parked on level #4. Sawasdikul arrives at the vehicle, stands and waits by the passenger door. Moments later suspect Michael Russo, wearing a black beanie, black jacket, blue jeans, and brown shoes, is seen walking toward the subject vehicle. Russo arrives at the driver's side of the vehicle, apparently uses the automatic key lock to open the vehicle, and both he and Sawasdikul enter. A white Nissan Altima arrives simultaneously at the location and waits next to the gray Altima for Russo to leave and take the parking space he occupied.

Deputy Stephen Sullivant is then observed running towards the vehicle and approaches the driver's side with his gun drawn. He opens the driver's door and is observed reaching into the open driver's side door, yelling "hands, let me see your hands, hands, hands, hands...." As deputy Sullivant was at the driver's side door of Russo's vehicle, Deputy Alfredo Lopez drives his patrol unit with emergency lights on to Sullivant's location and stops just South and behind Russo's vehicle. Just as Deputy Lopez stopped, the video shows Russo rapidly accelerating the vehicle backwards out of the parking space as Deputy Sullivant is grabbing at him or hanging on to the vehicle.

The vehicle dragged Deputy Sullivant with the open door. As Russo accelerated backwards out of the parking space, he rammed the front end of Deputy Lopez's patrol unit with the rear end of his vehicle, knocking the patrol unit backwards. The open driver's

door struck Deputy Sullivant in the back. Deputy Sullivant was still trying to stop Russo grabbing at him inside the vehicle yelling, "Stop, stop, stop, stop, stop," however Russo ignored Deputy Sullivant's commands and accelerated forward just as Deputy Sullivant fired one shot at him.

Russo then struck the white Nissan waiting to take his parking lot. The white Nissan backed away. Russo backed up and then accelerated forward as Deputy Sullivant fired a second shot into the vehicle with the driver's door now closed, shattering the driver's side window. Russo drove the gray Altima head onto the same white vehicle pushing it backwards as he turned and fled down the third level of the parking structure. The video then shows Deputy Sullivant running after Russo's vehicle and Deputy Lopez returning to his patrol unit and following pursuit.

INJURIES/WOUNDS TO OFFICERS/WITNESSES INVOLVED:

Deputy Sullivant suffered an abrasion on the top of his right middle finger, an abrasion on the right side of his right little finger, and two abrasions on his left shin. There were no reported injuries to Deputy A. Lopez who was in the patrol unit Russo struck as he fled the scene. There was no mention of any injuries reported to Fidel and Sarah Escobar, who occupied the white Nissan Altima Russo struck as he fled from deputies down the parking lot structure. Sirikul Sawasdikul' s injuries were previously noted.

PHOTOGRAPHS/DIAGRAMS/SKETCHES SUBMITTED

Numerous photographs, diagrams, pictures, and sketches depicting levels three (3) and four (4) of parking structure #2 at the San Manuel Casino and crime scene were submitted as part of the investigation of this incident. All of them are contained in the investigative binders of this case.

DAMAGES TO VEHICLES INVOLVED IN THIS INCIDENT

Several vehicles were involved in and damaged during this incident. The vehicles and damages are outlined below:

- 1. White Nissan Altima – License # 7CKM1**:** Vehicle registered to and occupied by Witness #1 and Witness #2. This is the white vehicle seen in the parking structure surveillance video that pulls next to the stolen gray Nissan Altima occupied by Russo and Sawasdikul, waiting to park in the space as Russo was about to leave. The vehicle was struck twice by Russo as he attempted to flee from deputies. The vehicle sustained moderate damage to the frontend bumper. Photographs of this vehicle are contained in the investigative binders of this incident.
- 2. San Bernardino County Sheriff's SUV Patrol Unit # 1619177:** This patrol unit was assigned to and driven by Deputy Alfredo Lopez at the time of this incident. As Deputy Sullivant approached the stolen vehicle as Russo was about to leave, Deputy Lopez drove his unit to Deputy Sullivant's location and stopped just South of and behind the suspect vehicle. Deputy Lopez arrived almost simultaneously just as Russo accelerated backwards out of the parking space. Russo's vehicle struck the front end of Deputy Lopez's patrol unit with the rear end of the gray Nissan Altima. The Sheriff patrol unit's frontend push bar was bent and damaged. Photographs to the patrol unit are contained in the investigative binders of this indent.
- 3. Green Toyota Highlander – license # 5CNN9**:** This vehicle was unoccupied and parked in garage parking structure # 2 - level #3 and appeared to be the first vehicle Russo struck as he fled in the gray Altima from level #4 down to level #3 of the parking structure. The Toyota Highlander sustained moderate damage to the rear bumper and right rear quarter panel. Photographs of the damages to this vehicle are contained in the investigative binders of this incident
- 4. Black Honda CRV SUV – license # 6FDH9**:** This vehicle was also unoccupied and parked next to the green Toyota Highlander on level #3 of parking garage #2. After striking the green Toyota Highlander, Russo's vehicle plowed into this Honda SRV that sustained major front and rear damage and appears to have been totaled by the collision. The Honda SRV came to rest against the side of a

Toyota Truck parked next to it. Photographs of the damages to this vehicle are contained in the investigative binders of this incident

5. **Tan Toyota Tundra Pick Up – license # 05761**:** This vehicle was unoccupied and parked next to the Honda CRV on level #3 of parking garage #2. Russo initially struck the Toyota Highlander, then the Honda CRV, causing the Honda CRV to collide into the Toyota Tundra pick-up. The Toyota truck sustained moderate damage to the left rear passenger door because of this collision. Photographs of the damages to this vehicle are contained in the investigative binders of this incident
6. **Grey Nissan Altima – license # 7SQS7**:** **Stolen** suspect vehicle involved driven by subject Michael Russo. This vehicle had rear end damage consistent with the ramming of the San Bernardino county Sheriff's Patrol Unit driven by deputy Alfredo Lopez. The Nissan Altima sustained major front end damage after colliding with the parked Toyota Highlander, Honda CRV, and appeared to have been totaled as well. Photographs of the damages to this vehicle are contained in the investigative binders of this incident

WITNESS STATEMENTS:

Witness #1

Witness #1 was in the white Nissan Altima with his wife Witness #2 sitting in the front passenger seat. He was initially interviewed at the scene on February 1, 2017 by Deputy J. Jones of the San Bernardino County Sheriff's Department. Witness #1 stated they followed suspect Russo as he walked and pulled next to Russo and the suspect vehicle waiting to take the parking space. As they waited, Witness #1 observed a deputy approach the suspect and vehicle, heard the deputy giving the suspect commands, and then saw the suspect back up the vehicle and run over the deputy. Witness #1 heard the deputy yelling at the suspect and then heard two shots. He did not see the deputy shoot the suspect.

The following day, February 2, 2017, Witness #1 was re-interviewed by Detective C. Hartleben from the Sheriff's Homicide Division. Witness #1 confirmed he and his wife

Witness #2 arrived at the San Manuel Casino in their white Nissan Altima and looked for a place to park. The lot was full when they saw a male subject, later I'D as Michael Russo, walking from the casino through the parking lot. They followed Russo believing he was going to leave so they could take his parking space. Russo walked to the gray Nissan Altima where they saw Sawasdikul waiting at the passenger side door. Russo entered the vehicle and started the engine.

Witness #1 then saw Deputy Sullivant approach the driver's door of Russo's vehicle. Deputy Sullivant had his gun pointed at Russo. Witness #1 could not hear what Deputy Sullivant was saying because the passenger window in his car was rolled up. After being confronted by Deputy Sullivant, Russo drove in reverse at a high rate of speed and struck Deputy Sullivant. Witness #1 believed Sullivant was hurt and then heard a gunshot. Russo's vehicle then drove forward striking Witness #1's vehicle. Witness #1's view was partially blocked by a cement column and he did not have a full view of the incident.

After striking Witness #1's vehicle the first time, Russo reversed his vehicle a second time and Witness #1 heard a second gunshot. Witness #1's wife reversed their vehicle attempting to get out of Russo's way, however Russo drove forward and struck their vehicle a second time and fled southbound in the parking structure.

Witness #2

Witness #2 was initially interviewed at the scene by Deputy J. Jones. Witness #2 was the driver of the white Nissan with her husband Witness #1 in the front passenger seat. While waiting to take Russo's parking spot, her husband noticed the deputy giving verbal commands towards the suspect and saw him attempt to get away from the deputy. Witness #2 saw the suspect try to run over the deputy and then heard gun shots. Witness #1 told her to sit back as the suspect attempted to leave. Their vehicle was struck twice before the suspect fled to the lower level. Witness #2 heard the deputy giving commands before the deputy fired the two shots.

The following day, February 2, 2017, Witness #2 was re-interviewed by Detective C. Hartleben. Witness #2 stated during the incident she did not know if Sullivant was a deputy or a security guard for San Manuel Casino. They arrived at the casino on February 1, 2017, at approximately 8:30 pm. She was driving with her husband, Witness #1, sitting in the front passenger seat. Witness #2 stated she drove through the parking structure looking for a parking space when they saw Russo exit the casino into the parking structure and followed him through parking level #4.

Russo approached the gray Nissan Altima with a female subject waiting by the front passenger door and entered the driver's side of the vehicle. Deputy Sullivant approached Russo's vehicle from the driver's door and instructed Russo not to move. Deputy Sullivant had his gun pointed at Russo inside the vehicle. Witness #2 observed Deputy Sullivan talking to Russo but could not hear what was being said but believed Sullivant told Russo "Don't move." Russo then started the vehicle, drove in reverse striking Deputy Sullivant.

Witness #2 stated Deputy Sullivant was caught inside the driver's door of Russo's vehicle and Sullivant was dragged by Russo's vehicle as he reversed the car. She estimated Sullivant was dragged approximately 20 feet when he fired a single shot at Russo. Witness #2 believed Sullivant was dead because he was dragged so violently.

Russo drove forward and struck Witness #2's car. She then saw the female passenger jump on top of Russo. Possibly to shield him. Witness #2 reversed her car to get out of the way however Russo struck her car a second time. She believed Deputy Sullivant instructed Russo not to move and then heard a second gun shot. Russo fled the scene southbound in the parking lot.

Witness #3 - Statement of Suspect Sirikul Sawasdikul

On February 2, 2017, Det C. Hartleben interviewed Sirikul Sawasdikul from her hospital bed at Loma Linda University Hospital. Sawasdikul advised she was the girlfriend of suspect Michael Russo, had been together for 12 years, and resided inside a trailer in the back of JJ Auto Repair in San Bernardino. On January 31, 2017, two males met her at JJ Auto Repair stating they needed to sell their friend's vehicle as he was arrested, would

be incarcerated for a long time, and needed to put money on his account in the jail facility. The vehicle they had for sale was a 2006 Nissan Altima and stated the vehicle was not stolen as they had the keys and registration to the vehicle. Sawasdikul purchased the vehicle for \$300.00.

The following day, Sawasdikul and Russo drove to San Manuel Casino, gambled for a while, lost all their money, and decided to leave. She arrived at the vehicle prior to Russo and waited for him. Russo arrived and unlocked the vehicle, got in the driver's seat, and started the vehicle. She entered the vehicle through the front passenger door. Russo put the vehicle in reverse, however they were still stationary. Sawasdikul saw Deputy Sullivant in uniform approach the driver's side door with the window half way down. Sullivant had his gun pointed at Russo and ordered him to get out of the vehicle. Russo stepped on the gas and the vehicle went backwards. Sullivant grabbed the steering wheel and ordered Russo to stop. Sullivant then shot Russo. For reasons, unknown, Sawasdikul thought Sullivant's weapon was a BB gun.

The vehicle continued to move and Sullivant shot Russo again. Russo passed out however his foot was still on the gas pedal. Sawasdikul tried to stop the vehicle but was not successful and they collided with a vehicle. The interview was stopped due to attending medical staff who transported Sawasdikul for surgery.

Sirikul Sawasdikul was re-interviewed on February 3, 2017, at Loma Linda Hospital by Det M. Cleary of the San Bernardino County Sheriff's Department's Homicide Division. Sawasdikul confirmed the purchase of the Nissan Altima at JJ Auto Repair. She stated a person by the name of "Hamburger" told her he knew a person that would sell her a car for \$400.00. On Tuesday, January 31, 2017 at approximately 12 pm, two unknown males came to J&J Auto and sold her the Nissan Altima for \$300.00. One of the males provided her with the keys and registration to the vehicle.

The following morning Sawasdikul and Russo went out collecting recyclables, cashed them in, and went to an internet café where they won \$200.00. Sawasdikul stated she and Russo decided to go to San Manuel Casino and Russo lost all the money. She

complained to Russo for losing all the money and left the casino before him. Sawasdikul walked to the Nissan Altima and waited for Russo who arrived a short time after her. Both entered the vehicle, Russo started the vehicle, put it in reverse, and lowered the driver's side window halfway down. Sawasdikul then saw an officer running towards their vehicle and told Russo the police are behind you. Russo got "spooked" and stepped on the gas pedal and made the car move in reverse as the officer reached for the steering wheel to stop Russo. She was aware the person was a police officer because of the uniform he wore.

Sawasdikul told Russo to "stop the car, stop the car" and then heard a gunshot. The officer shot Russo to stop him from moving. The vehicle was moving in reverse with the door closed when the officer fired first gunshot. The vehicle was moving forward when Sawasdikul heard the second gunshot. She thought Russo went unconscious after the second gunshot and thought she heard two or three gunshots during the incident.

Sawasdikul tried to stop the vehicle however could not get Russo's foot off the gas pedal and they collided into parked cars. She did not remember any other collision they were in other than when they crashed. Sawasdikul thought they may have run into something when Russo backed the car up. After the collision, police and paramedics arrived and heard them talking about the Nissan being stolen. Sawasdikul then admitted she lied about her name and that of Russo's.

Witness # 4

Witness Witness #4 was initially interviewed by Deputy Jesse Moon of the San Bernardino County Sheriff's Department on February 1, 2017, at the collision site of Russo's vehicle on level 3 of the San Manuel Casino parking structure. Witness #4 advised he was leaving the casino from the top floor of the casino parking structure driving down the ramp when he was cut off by the gray Nissan Altima and saw a deputy with his gun out chasing the vehicle. He noticed a window on the vehicle had been shattered and thought it may have possibly been involved in a shooting. Witness #4 was previously a reserve police officer and was going to obtain a vehicle description and follow the vehicle if it left the parking structure. He saw the vehicle wreck and stopped at the scene.

Witness #4 stated he did not know the suspect had been shot otherwise he would not have gotten involved. He estimated Russo's vehicle was traveling 60-70 mph in the parking structure. One of the vehicles Russo struck went about three (3) feet off the ground. He exited his vehicle and approached the passenger side of the vehicle to render aid and heard the female state something about the male being shot. Witness #4 then backed off and called for assistance on one of the emergency phones nearby.

Witness #4 was re-interviewed on February 2, 2017, by Detective Michael Cleary of the San Bernardino County Sheriff's Department's Homicide Division. He confirmed his initial statement adding he was coming down the fifth-floor ramp to the fourth floor of the parking structure when he was cut off by the gray Nissan Altima. He saw the driver's side window had been shot out although he did not hear any gun shots. He saw a deputy with his gun out chasing the vehicle.

Witness #4 followed the vehicle to the 3rd floor level, saw it drive through a metal barricade at a high rate of speed, and crash into two parked cars. He did not see any brake lights come on as the vehicle drove through the metal barricade. Witness #4 ran to the Russo's vehicle to render aid and contacted the female passenger who stated "help me, they shot my boyfriend." He saw the male driver covered in blood, unresponsive, slumped over onto the female, and appeared to be deceased. He then called for help on the emergency phone. He was later advised by casino security officers that the vehicle was stolen.

Witness # 5 -

Witness #5 was initially contacted and interviewed by Deputy Alfredo Lopez on February 1, 2017 on the fourth level of the parking structure of San Manuel Casino near the shooting incident. Witness #5 advised he was sitting in his vehicle waiting for his wife to finish gambling in the casino. He was watching videos on his cell phone and heard three (3) gun shots. He ducked down and then saw a vehicle drive away. He had no other information to offer.

Witness #5 was re-interviewed on February 2, 2017 by Det. Michael Warrick of the San Bernardino County Sheriff's Department Homicide Division and basically confirmed his

previous statement to Deputy Lopez adding he thought he heard three to four shots and saw a black car driving away at a high rate of speed.

Witness # 6

Witness #6 was a civilian ride-a-long seated in the front passenger seat of Deputy Alfredo Lopez's patrol unit at the time of this incident. He was initially interviewed by Deputy Lopez on the fourth level of the parking lot after the officer involved shooting occurred. Witness #6 stated as they approached the suspect vehicle, Deputy Sullivant was warning the driver (Russo) to stop. Russo's vehicle then ran into Deputy Lopez's patrol unit. Sullivant continued to warn the driver and that's when the gunshots happened. He estimated the distance of the shooting location to his position in their patrol unit to be approximately 10 to 15 feet.

Witness #6 was also contacted and a brief statement taken from him by Deputy J. Jones at the shooting location. Witness #6 stated he saw Deputy Sullivant confront the suspect who was the driver of the stolen vehicle, telling him multiple times to stop moving the vehicle. Witness #6 saw an object in the deputy's hand that looked like a taser, black in color, pointed at the suspect while Deputy Sullivant was giving commands to the suspect.

Witness #6 was re-interviewed on February 2, 2017 by Det. Michael Warrick and Det. Michael Clearly of the San Bernardino County Sheriff's Department Homicide Division. Witness #6 started out the interview stating they heard radio traffic that the suspect vehicle was in the parking structure so they went in to look for the car. He was in Deputy Lopez's patrol unit with deputy Sullivant and once they located the stolen vehicle they parked about forty (40) yards away. They set up the "rat traps" and awaited further instructions of the suspects returning to the car. Sullivant and Lopez discussed how they were going to apprehend the suspects. Sullivant was going on foot and Lopez to remain in the car. At some point, Deputy Sullivant exited Lopez's patrol unit to get his own. Someone picked him up. Deputy Sullivant was going to wait in a corner of the parking structure and apprehend the suspects they entered the car.

Minutes later they received radio traffic the suspects were approaching the vehicle and they advanced to the location where Lopez stopped. Witness #6 saw Deputy Sullivant had opened the door with the suspects inside, had them at gunpoint, and repeatedly telling them to get out. They were about 10 to 15 feet away. Witness #6 stated Russo looked at them as he backed out, saw the patrol unit, revved his engine, and backed his car into Deputy Lopez's patrol unit while Deputy Sullivant was holding onto the door.

Witness #6 heard Sullivant repeatedly yell to stop/step out of the vehicle. After the vehicle hit Lopez's patrol unit it advanced forward and that's when he heard the first shot. Witness #6 believed Sullivant was about three (3) feet away from Russo's vehicle when Sullivant fired the first shot. The vehicle then hit an older lady in another car as it tried to escape. He stopped for a bit and appeared to gain his composure and accelerated forward going after Dep. Sullivant who yelled at the suspects several times to stop when the second shot was fired. Abner stated the second shot did not seem to faze Russo.

The suspect vehicle took off at a high rate of speed and they lost visual of it. Minutes later, they heard over the radio the suspect vehicle was on the third level, drove there, and saw the vehicle had crashed with other vehicles. He saw the female in the passenger side with blood on her face and crying. Deputy Lopez exited the patrol unit, checked the suspects, and called for paramedics at that point. Witness #6 remained in the car during the entire incident.

Officer Interviews

1. Officer Roy Lopez - San Manuel Casino Department of Public Safety

Public Safety Officer Roy Lopez was on duty on 2/1/2017 @ approximately 7:56 pm when he was advised by Deputy A. Lopez of the San Bernardino County Sheriff's Department of the stolen vehicle license plate hit on a 2006 Nissan Altima possibly entering the San Manuel Casino grounds. Officers monitoring the parking garage surveillance cameras located the suspect vehicle on level 4 of parking structure # 2. At approximately 8:16 pm, surveillance video depicted a male and female subject exiting the parked suspect vehicle and enter the main casino at 8:20 pm. Officer Lopez advised Deputy Lopez would

be setting up surveillance on the vehicle waiting for the occupants to return. At 8:47 pm, surveillance video showed the male and female subjects exiting the casino and walking back to the suspect vehicle.

Officer Lopez saw a Sheriff's Patrol Unit enter the 4th floor parking level toward the suspect vehicle and then advised he heard gun shots and responded to the location of the stolen vehicle. Once there, Officer Lopez saw the gray suspect vehicle driving at a high rate of speed attempting to leave the scene. The driver's side window was shattered. Officer Lopez saw the gray vehicle crash into the white Nissan Altima accelerating forward, pushing it back until the gray Nissan cleared and was able to flee toward and down the 3rd level of the parking structure. Officer Lopez then secured the crime scene for responding deputies and checked on the status of the two occupants of the white Nissan that Russo struck as he fled.

2. Officer David Shernaman - San Manuel Casino Department of Public Safety

Public Safety Officer David Shernaman was on duty 2/1/2017 @ approximately 8:49 pm when he monitored a call of shots fired in the San Manuel Casino parking structure. Officer Shernaman responded to parking structure # 2 and heard gun shots and a loud crash inside. He entered the structure, heard someone yelling for help on level 3, and ran to the location. Once there, Officer Shernaman observed a gray Nissan Altima that crashed into three (3) other vehicles. The male driver of the vehicle, Michael Russo, was slumped over onto the female passenger Sirikul Sawasdikul, who was trapped in the vehicle screaming in pain because of her injuries. Officer Shernaman requested medical assistance from San Manuel Fire Department who responded to the location.

Officer Shernaman documented the vehicles involved in the crash and damages to them. Photographs were also taken at the scene. Officer Shernaman also interviewed one witness at the scene who heard the crash, drove over to the crash site, however could not assist the occupants trapped inside the vehicle because of their condition.

3. Deputy Alfredo Lopez - San Bernardino County Sheriff's Department

On March 31, 2017, Deputy Alfredo Lopez was interviewed by Detectives Arturo Alvarado and Michael Warrick of the San Bernardino County Sheriff's Department's Homicide

Division. The interview was audio recorded and the following is a summary of the interview for purposes of this report and analysis. A copy of the transcribed verbatim interview is contained in investigative report binders submitted for review of this matter.

On February 1, 2017, Deputy Alfredo Lopez was assigned to Sheriff's Central Station Patrol – San Manuel Casino, working PM1 shift from 7 pm to 7 am. Deputy Lopez had a civilian ride along, Abner B., during his shift and at the time of this incident. Deputy Lopez had been employed by the San Bernardino County Sheriff's Department for approximately eight and one half years.

Deputy Lopez's patrol unit was not equipped with a dash board camera, he did not have or wear a body camera, however did have an audio belt recorder that he activated during this incident. A copy of the complete transcribed belt recording is also contained in investigative report binders submitted for review of this matter.

Shortly after his shift began, Deputy Lopez reported that at approximately 2000 hours (8 pm) Sheriff's Central Station's Advanced License Plate Recognition (ALPR) received a hit on a reported stolen gray Nissan Altima at the intersection of Highland and Victoria Aves. in the city of Highland near the San Manuel Casino. He notified San Manuel Casino Department of Public Safety (DPS) of the vehicles description and license plate number. DPS officers located the vehicle on the forth level of parking structure and advised San Bernardino County Sheriff's Deputies of its location. Deputy Lopez and Deputy Stephen Sullivant were the primary investigating officers of this incident. They located the vehicle on the forth level and placed "rat trap" tire deflating devices under the vehicle.

Deputy Lopez and Sullivant formulated a plan to apprehend the suspects before they entered the vehicle and had been given a description of them after they arrived at the casino, parked, and exited the vehicle. Deputy Sullivant would approach on foot and he would remain in his patrol unit in case the vehicle fled. Deputy Lopez and Sullivant set up surveillance of the vehicle waiting for the occupants to return, however did not have a good vantage point of it.

Approximately 20 minutes later, Lopez and Sullivant were advised by DPS officers the suspects were returning to the vehicle. Deputy Lopez observed Russo walking in the parking structure. As the two suspects approached the vehicle, Deputy Sullivant advised him to "roll in" with overhead lights on to conduct a felony traffic stop. As he did so, Deputy Lopez stated he saw the reverse lights come on and the vehicle then plowed into his vehicle at a very high rate of speed with his partner, Deputy Sullivant, hanging out the door. Sullivant was being dragged by the car that struck his patrol unit hard.

Deputy Lopez heard Sullivant yelling commands to the suspect and remembers hearing Sullivant yelling "let me see your hands" and "stop." Dep Lopez exited his patrol unit with his gun drawn as Russo's vehicle sped forward and ran into the white Nissan. He then heard a second shot. The first shot happened while he was in his patrol unit approximately three seconds after it was struck. As Lopez approached the gray Nissan, Deputy Sullivant was approximately three (3) feet in front of him when Sullivant fired the second shot and the vehicle sped off. Lopez saw the gray Nissan hit the white Nissan a second time, rev its engine, and then push it out of the way and fled. Lopez stated he and Sullivant lost sight of the vehicle after it fled. They located the vehicle after it crashed on level #3 of the parking lot.

Deputy Lopez approached the gray Nissan after it collided with the other vehicles and observed the driver Russo, that he believed was dead, and the injured female passenger. He checked the male and could not feel any pulse. He took photographs and then returned to the fourth level to secure the scene of the shooting.

When asked if he would have fired his weapon, Deputy Lopez stated "if I had a clear shot, he had just dragged and assaulted his partner. He (Russo) seemed desperate and was fleeing. He was a fleeing felon.... honestly, I don't know if I would have shot or not, but if I had the opportunity and had a clear backdrop, I probably would have shot." Deputy Sullivant was in front of him so he did not have a shot and did not fire.

4. Deputy Stephen Sullivant – San Bernardino County Sheriff's Department

On March 31, 2017, Deputy Stephen Sullivant was interviewed by Detectives Arturo Alvarado and Michael Warrick of the San Bernardino County Sheriff's Department's Homicide Division. The interview was audio recorded and the following is a summary of the interview for purposes of this report and analysis. A copy of the transcribed verbatim interview is contained in investigative report binders submitted for review of this matter.

On February 1, 2017, Deputy Stephen Sullivant was assigned to Sheriff's Central Station Patrol, working PM1 graveyard shift from 7 pm to 7 am. Sullivant was partnered with Deputy Alfredo Lopez during his shift and was assigned to San Manuel Casino. Deputy Sullivant had been employed by the San Bernardino County Sheriff's Department for approximately seven and one half years.

Deputy Sullivant's patrol unit was not equipped with a dash board camera, he did not have or wear a body camera, however did have an audio belt recorder that he activated during this incident. A copy of the complete transcribed belt recording is also contained in investigative report binders submitted for review of this matter.

Deputy Sullivant stated the graveyard shift was not his normal shift and San Manuel casino not his normal assignment and had traded shifts for that day. Deputy Lopez picked him up and they drove to the Casino. They were conducting a vehicle check in the south parking of the Casino when they received radio traffic of a hit on a stolen vehicle automated license plate reader. They drove to Victoria Ave. where all traffic enters the casino grounds, watched for the stolen vehicle however did not see it. At some point he and Deputy Lopez were made aware of the stole vehicle's location on the fourth floor of the parking lot structure. They located the vehicle, (a gray Nissan Altima), and placed "rat trap" tire deflating devises underneath its tires. At that point, he was in Deputy Lopez's patrol unit and then retrieved his own unit that was already parked at the location. He and Deputy Lopez then discussed how they were going to take down the occupants of the vehicle and whether they would let the vehicle go mobile or not.

Deputy Sullivant and Lopez decided to take the vehicle and occupants down in the parking lot prior to them entering the vehicle. He had difficulty finding a good observation

point because of the vehicles location, so Deputy Sullivant walked to a nearby stairwell to obtain a better view of the vehicle. As he did so, Sullivant was advised the occupants were walking back to the vehicle. He observed the female walk to and wait at the vehicle prior to the male arriving shortly thereafter.

Sullivant activated his belt recorder and started toward the vehicle. He was approaching the vehicle on foot and Deputy Lopez in his patrol unit. Both were to arrive at the same time, however due to an apparent miscommunication, Deputy Sullivant arrived first and did not see Deputy Lopez. Russo had already entered the vehicle and was sitting down.

Sullivant continued stating he opened the car door, Russo looked at him as though he was afraid, and Russo's right hand went down towards the driver's compartment area where someone could secrete a weapon. Sullivant started yelling "hands, hands, hands, hands, hands" and he attempted to grab Russo and pull him out of the vehicle, however Russo abruptly threw the vehicle into reverse and Sullivant was on his way backward very quickly. He thought "how is he not under the car" and thought he would be run over. Sullivant stated he was caught between the door and door frame as the vehicle went backward. He could not remember how he stayed standing as the car reversed.

Russo then struck a white truck or SUV behind them and Sullivant hit the door frame hard. Sullivant did not realize the vehicle Russo struck was Deputy Lopez's patrol unit. After colliding with the patrol unit, Russo looked straight at him with a look Sullivant described as "panic." Sullivant stated he thought Russo almost killed him, was going to kill him, as he had just rammed the vehicle behind them. Sullivant was concerned for his safety and the safety of other people and decided he needed to stop the threat Russo presented.

Russo then accelerated the vehicle forward when Sullivant fired a shot at him as he leaned into the vehicle. Russo struck the white Nissan head on. Sullivant ran over to the vehicle and attempted to open the driver's door however it was now locked. Sullivant heard the engine rev and Russo drove forward when Sullivant fired the second shot at Russo who drove head on to the white Nissan, pushing it backwards and out of his way. Russo then

fled down the parking structure. Sullivant ran to his patrol unit parked nearby, however had lost sight of Russo's vehicle after it fled down the third level of the parking structure.

Sullivant was not sure where Russo's vehicle was until he heard radio traffic there was a vehicle collision on the third level of the parking structure. He responded to that location and saw Russo's vehicle had collided with another vehicle. He exited his patrol unit, however remembered being told by one of his partners to hang out by his patrol unit where he stayed until he was transported back to Central Station.

5. Sergeant Fred Parrish – San Bernardino county Sheriff's Department

On February 3, 2017, Sergeant Fred Perry was interviewed by Det M. Cleary of the San Bernardino County Sheriff's Department's Homicide Division. At the time of his interview, Sgt. Parrish had been employed by the San Bernardino County Sheriff's Department for 19 years and was assigned to Sheriff's Central Station as Patrol Sergeant.

On February 1, 2017, Sgt. Parrish was assigned as watch commander at Sheriff's Central Station working PM1 (graveyard) shift from 6 pm to 6 am the following day. At approximately 1953 hrs. (7:53 PM), Sheriff's Central Station received an alert from their Automated License Plate Recognition (ALPR) camera located at the intersection of Highland and Victoria Aves. in the city of Highland, of a reported stolen vehicle passing through that location possibly headed into the San Manuel Resort and Casino. Sgt. Parrish assigned himself to the call and responded to and arrived at San Manuel Casino at approximately 8:22 PM. Upon his arrival, Sgt. Parrish positioned himself in the South parking lot of the casino where most vehicles exit the parking structure of the casino.

Sgt. Parrish was eventually joined by Sgt. Kevin Warren – Central Station Patrol Sergeant and Sgt. Brandon Wiebeld – Highland Station Patrol Sergeant. A decision was made to deploy spike strips if the vehicle exited the casino parking structure past their location. Sgt. Parrish received information from Deputy Lopez on the suspects clothing description when they were observed by DPS Officers exiting the suspect vehicle after arriving at the casino. At approximately 8:47 PM, Sgt. Parrish monitored radio traffic that a female subject was now at the suspect vehicle location and then heard the male suspect was

observed walking towards the vehicle as well. Sgt. Parrish started driving to the parking structure and heard radio traffic of a failure to yield (FTY).

Sgt. Parrish then heard Deputy Sullivant broadcast "shots fired" stating he had shot twice at the suspect. Sgt. Parrish located Sullivant in the parking structure and asked him if he shot the driver of the suspect vehicle to which Sullivant responded, "Yes sir, I shot him twice." Sullivant said he was pinned by the driver's door and dragged. The driver ended up crashing into several cars and Sullivant shot him two times. Sgt. Parrish responded to Level #3 of the parking structure where he saw the suspect vehicle had crashed into two parked vehicles. Sgt. Parrish approached the occupants of the suspect vehicle and observed Russo seated in the driver's seat slumped over onto Sawasdikul, the female passenger. Sgt. Parrish checked Russo for a pulse, however did not detect one. Medical aid then arrived and started treating the suspects.

Sgt. Parrish advised tactical planning for grand theft autos at the casino had been gone over many times during briefings and has been executed several times at the casino with high success. The tactical plan is to utilize rat traps, tire deflation devices, to disable the vehicles as they exited the parking structure or sooner and surveillance by deputies in the parking structure who would then take down or apprehend the suspects driving the vehicles. Sgt. Parrish advised in this specific instance, the suspect vehicle was not parked in a location where other stolen vehicles typically have been located and made it difficult to surveil by deputies. Other than this, there were no other issues with the tactical plan.

6. Sgt. Kevin Warner – San Bernardino County Sheriff's Department

On February 3, 2017, Sgt. Kevin Warner was interviewed by Det. Michael Warrick of the San Bernardino County Sheriff's Department's Homicide Division. At the time of his interview, Sgt. Warner had been employed by the San Bernardino County Sheriff's Department for 12 years and was assigned to Sheriff's Central Station as Patrol Sergeant.

On February 1, 2017, Sgt. Warner was assigned as watch commander at Sheriff's Central Station working the cover shift from 2 pm to 2 am the following day. At approximately 1954 hrs. (7:54 PM), Sheriff's Central Station received an alert from their Automated

License Plate Recognition (ALPR) camera located at the intersection of Highland and Victoria Aves. in the city of Highland, of a reported stolen vehicle passing through that location possibly headed into the San Manuel Resort and Casino. Sgt. Warner arrived on scene at the San Manuel Casino at approximately 8:24 PM and meet with Sgt. Parrish and Sgt. Wiebeld in the South parking lot of the casino and staged in the south parking lot to wait for the vehicle if it exited the parking structure.

Sgt. Warner stated approximately nineteen (19) minutes after he arrived at the location, he was advised the suspects exited the casino and started to approach the suspect vehicle. He then monitored radio traffic that the suspect vehicle hit multiple vehicles and shots fired. Warner stood by his location however the suspect vehicle never exited the parking structure. Warren then heard radio traffic of a vehicle collision on level # 3 and responded to the location. There, Warner contacted Deputy Sullivant who advised him he (the suspect) opened the car door, threw the vehicle in reverse, jerking Sullivant back and the suspect dragged Sullivant. Warner realized Sullivant was probably the deputy who shot and advised him to slow down and not tell the entire story.

Sgt. Warner obtained a public safety statement from Sullivant asking him how many shots were fired to which Sullivant replied he fired two shots. Sullivant was asked if he was injured and Sullivant replied he was ok however he was dragged a little bit and knocked with the door of the vehicle. Sgt. Warner then directed Deputy Nicassio to standby with Sullivant and not talk about the incident. Sgt. Warner then directed deputies to tape off the crime scene. He approached the suspect vehicle and heard the female passenger screaming and appeared to be wedged in the vehicle.

Sgt. Warner returned to Deputy Sullivant and asked where the shooting occurred to which Sullivant replied on the fourth level in 4H. Warner asked Sullivant what his backdrop was when he shot and Sullivant stated he shot two (2) rounds and began telling Warner how the shooting occurred. Sullivant stated the suspect pulled out and the door took Sullivant with the vehicle. The vehicle then hit another car and pulled forward again. Sgt. Warner continued to process the crime scene making other assignments and notifications. This concluded the interview with Sgt. Warner.

7. Sergeant Brandon Wiebeld – San Bernardino County Sheriff’s Department

On February 2, 2017, Sgt. Brandon Wiebeld was interviewed by Detective Arturo Alvarado and Detective Brenden Motley of the San Bernardino County Sheriff’s Department Homicide Division. At the time of his interview, Sgt. Wiebeld had been employed by the San Bernardino County Sheriff’s Department for 18 years and was assigned to Sheriff’s Highland Station as Patrol Sergeant.

On February 1, 2017, Sgt. Wiebeld was working as Patrol Sergeant at Sheriff’s Highland Station on graveyard shift from 6:30 pm to 6:30 am the following day. Sheriff’s dispatch broadcast an alert from the Sheriff’s Department’s Automated License Plate Recognition (ALPR) camera located at the intersection of Highland and Victoria Aves. in the city of Highland. A reported stolen vehicle had passed through that intersection possibly headed into the San Manuel Resort and Casino. Wiebeld was aware prior stolen vehicles often entered the San Manuel Casino parking structure. Sgt. Wiebeld responded to the casino and arrived on scene and meet with Sgt. Parrish and Sgt. Warner in the South parking lot of the casino and staged in lot to wait for the stolen vehicle if it exited the parking structure.

Sgt. Wiebeld recalled hearing radio traffic that the stolen vehicle was located inside the parking structure and heard deputies assigned to the casino discussing they were conducting surveillance of the stolen vehicle. He, along with Sgt. Parrish and Sgt. Warner discussed using and setting a spike strip at their location as the vehicle had to pass through their location if it exited the parking structure. Wiebeld monitored radio traffic advising the female was back at the stolen vehicle. Wiebeld decided to get into his patrol unit and park just South of the casino property believing he could easily join a pursuit of the vehicle if it left the parking structure. As he walked towards his patrol unit, Wiebeld heard a loud boom that he thought could have been the stolen vehicle crashing into other vehicles. He advised there was a lot of confusion and then heard a deputy say he shot twice.

Sgt. Wiebeld drove into the parking structure and stopped on level # 3. He was unaware of the location of the vehicle until he heard radio traffic advising it had crashed on level #3. He drove to the collision site and walked over to the vehicle. He saw Sawasdikul sitting in the front passenger seat with Russo in the driver's seat leaning over her. He then began assisting with securing the scene. Wiebeld observed Deputy Sullivant sitting in a patrol unit nearby stating he looked dazed. He confirmed Sullivant was okay and offered him water.

RELEVANT CASE LAW AND STATUTES

REASONABLE SUSPICION TO DETAIN

A temporary detention requires a reasonable suspicion that the person detained may be involved in criminal activity. Reasonable cause demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*United States v. Sokolow* (1989) 490 U.S. 1, 7; *Terry v. Ohio* (1968) 392 U.S. 1, 22.) “[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” (*In re Tony C.* (1978) 21 Cal.3d 888, 893; see also *People v. Turner* (2013) 219 Cal.App.4th 151, 160.) “The reasonableness of the officer’s suspicion is determined by what he or she knows before any search occurs.” (*People v. Turner, supra.*)

Reasonable cause must be supported by articulable facts rather than inchoate suspicion or hunch. (*United States v. Sokolow, supra*, 490 U.S. at p. 7.) In determining the validity of a detention, the court must consider the totality of the circumstances. (*Id.* at pp. 8-9; see also *United States v. Arvizu* (2002) 534 U.S. 266, 277-278.) It is immaterial that there might be a possible innocent explanation for the activity witnessed by the police officer. Even innocent behavior will frequently provide a showing of reasonable cause to detain. (*United States v. Sokolow, supra*, 490 U.S. at pp. 9-10.)

In the present case, the gray 2006 Nissan Altima Michael Russo drove to the San Manuel casino on February 1, 2017 was a reported and confirmed stolen vehicle. The San Bernardino County Sheriff's Department – Central Station received an Automated License Plate Reader Alert of this stolen vehicle at the intersection of Highland and Victoria Avenues in San Bernardino, Ca. possibly headed into the San Manuel Indian Resort and Casino. Sheriff's Deputies Stephan Sullivant and Alfredo Lopez from the Sheriff's Central Station responded to the location to investigate. Prior to their arrival, San Manuel Casino Department of Public Safety Officers located the subject stolen vehicle inside the parking structure of San Manuel Casino located at 777 San Manuel Blvd. in Highland, California and notified responding deputies. Based on these facts and information known to Deputies Sullivant and Lopez, there is no factual or legal dispute they had a "reasonable suspicion" to detain the driver and occupants of the vehicle to further investigate their possession of the stolen vehicle.

PROBABLE CAUSE TO ARREST

Penal Code Section 836(a) provides:

"A peace officer may arrest a person in obedience to a warrant or without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence, that the person has committed a felony although not in the officer's presence, or the officer has probable cause to believe the person committed a felony whether or not a felony, in fact, has been committed."

A warrantless custodial arrest is reasonable under the Fourth Amendment whenever a police officer has probable cause to believe the person arrested has committed a criminal offense. *People v. Kraft* (2000) 23 Cal.4th 978, 1037; *People v. Moore* (1975) 51 Cal.App.3d 610, 616; *People v. Braun* (1973) 29 Cal.App.3d 949, 966-967.) The probable cause standard applies to all offenses, from felonies to very minor criminal offenses punishable only by a fine. *Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 323, 340, 353; *People v. McKay* (2002) 27 Cal.4th 601, 605, 618.

Probable cause to arrest exists when the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information would lead an officer of ordinary care and prudence to entertain an honest and strong suspicion that

the person arrested or to be arrested, has committed a crime. *Beck v. Ohio* (1964) 379 U.S. 89, 91; *People v. Kraft, supra*, 23 Cal.4th at p. 1037; *People v. Price* (1991) 1 Cal.4th 324, 410; see also *Safford Unified School Dist. #1 v. Redding* (2009) 557 U.S. 364, 370; *People v. Scott* (2011) 52 Cal.4th 452, 474.

Probable cause requires only a fair probability of criminal activity, not a prima facie showing. *Illinois v. Gates* (1983) 462 U.S. 213, 235; *People v. Lewis* (1980) 109 Cal.App.3d 599, 608; *People v. Moore* (1970) 13 Cal.App.3d 424, 436.) Nor does probable cause require that the officer's belief "be correct or more likely true than false." *Texas v. Brown* (1983) 460 U.S. 730, 742.

Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. By hypothesis, therefore, innocent behavior frequently will provide the basis for a showing of probable cause; to require otherwise would be to sub silentio impose a drastically more rigorous definition of probable cause than the security of our citizens' demands. ... In making a determination of probable cause the relevant inquiry is not whether particular conduct is "innocent" or "guilty," but the degree of suspicion that attaches to particular types of noncriminal conduct. *Illinois v. Gates, supra*, 462 U.S. at p. 243, fn. 13.

Probable cause must be viewed in the totality of the circumstances, not based on any isolated event." (*In re J.G.* (2010) 188 Cal.App.4th 1501, 1506.) Probable cause is a practical, nontechnical concept to be determined upon the facts and circumstances of each case. (*Maryland v. Pringle* (2003) 540 U.S. 366, 370-371.) There is no exact formula for determining whether probable cause to arrest exists. (*People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1742.)

Instead, the court should look to the totality of the surrounding circumstances and decide each case on its own facts, taking into account such things as (1) the officer's experience (which may render suspicious that which appears innocent to a layman); (2) the officer's prior contacts with the suspect; (3) the officer's awareness that the area is one known for street drug transactions; (4) the defendant's conduct (such as a covert or secretive display, transfer or exchange); (5) a caching of an object given or received in a peculiar receptacle designed for a different, specialized purpose; (6) some indication by the defendant of a consciousness of guilt; and so on.

The evidence supporting probable cause need not be admissible at trial on the issue of guilt. (*People v. Ingle* (1960) 53 Cal.2d 407, 412-413.)

The facts and circumstances that supported a "**reasonable suspicion**" to detain Russo and Sawasdikul for their possession and occupancy of the stolen Nissan Altima also

substantiated **“probable cause”** to believe Russo and Sawasdikul had committed a felony offense of VC 10851 – Unlawful Taking or Driving of a Stolen Vehicle or the felony offense of PC 496(d) – Possession of a Stolen Motor Vehicle. As mentioned, Deputies Sullivant and Lopez were advised of and dispatched to investigate the alert for the stolen Nissan Altima after it passed through the intersection of Highland and Victoria Streets in the city of Highland, possibly headed into the San Manuel Casino. Both were aware of or involved with prior auto theft investigations at the casino.

Officers from the San Manuel Casino – Department of Safety located the stolen Nissan on the fourth level of the parking lot structure. They then reviewed surveillance video of the vehicle when it arrived and parked. Officers observed Russo and Sawasdikul exit the vehicle and enter the casino. They broadcast the clothing description of Russo and Sawasdikul to Deputies Sullivant and Lopez who later observed the two matching the description given, walking toward the stolen vehicle. Sawasdikul arrived prior to Russo and waited at the vehicle's passenger side door. Russo arrived moments later, opened the vehicle with the wireless key, both entered the vehicle, and were about to leave when Deputy Sullivant attempted to detain and arrest them for possession of the stolen vehicle.

There is no question based on these facts that Deputy Sullivant and Lopez had legal and justifiable **“probable cause”** to arrest Russo and Sawasdikul.

USE OF FORCE TO EFFECT ARREST

Penal Code Section 835a provides:

Any peace officer that has reasonable (probable) cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to affect the arrest or to prevent escape or to overcome resistance.

USE OF DEADLY FORCE BY A PEACE OFFICER

Authorization of the use of Deadly Force is analyzed under the Fourth

Amendment's "objective reasonableness" standard. *Plumhoff v. Rickard* (2014) 572 U. S. ___, 134 S.Ct. 2012; *Brosseau v. Haugen*, (2004) 543 U.S. 194, This question "is governed by the long standing principles enunciated in *Tennessee v. Garner*, (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386.

In these decisions, the US Supreme explained "it is unreasonable for an officer to 'seize an unarmed, non-dangerous suspect by shooting him dead..... However, where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.'" (*Tennessee V Garner; Plumhoff v. Rickard; Brosseau v. Haugen supra*)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary. *Graham, 490 U.S. at 396*. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

The US Supreme Court in *Graham* set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (See also *Billington v. Smith*, (2002 9th Cir) 292 F.3d 1177, 1184.) The most important of these factors is the threat posed by the suspect. *Smith v. City of Hemet*, (9th Cir. 2005) 394 F.3d 689.

Price v. Sery (2008) 513 F.3d 962, further discussed the relationship between *Garner* and *Graham* and held that "Both cases focused on the 'totality of the circumstances' and the 'perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.'" *Id.* at 967. *Sery* involved the use

of deadly force by a city of Portland Police officer on a motorist. The Court ruled that the Portland Police Department policy on the use of deadly force was proper under both the **Garner** and **Graham** rulings.

Thus, under **Graham**, the high court advised we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. "We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." (**Smith v. Freland (6th Cir.1992) 954 F.2d 343, 347.**)

The US Supreme Court's definition of "**reasonableness**" is therefore comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present. **Roy v. Inhabitants of City of Lewiston** (1st Cir.1994) 42 F.3d 691, 695, In effect, the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases.... (*Ibid.*) Thus, "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer."

Based on the above stated principles, where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. *However where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to apprehend the suspect or prevent escape. (Tennessee v Garner; Graham V Conner supra.)*

California Law is also in accord.

Penal Code section 195 provides:

Homicide is excusable in the following cases:

1. Where committed by accident and misfortune or in doing any lawful act by lawful means with usual and ordinary caution and without any unlawful intent.

Penal Code section 196 provides:

A police officer who kills someone has committed a justifiable homicide if the homicide was “necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty or when necessarily committed in retaking felons who have been rescued or who have escaped ... and who are fleeing from justice or resisting such arrest.

Penal Code section 197, subdivisions 1 and 4, provides:

“Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Police may use deadly force to arrest only if the crime for which the arrest is sought was “a forcible and atrocious one which threatens death or serious bodily harm,” or there is a substantial risk that the person whose arrest is sought will cause death or serious bodily harm if apprehension is delayed. *Kortum v. Alkire*, (1977) 69 Cal.App.3d 325, (see also *People v. Rivera* (1992) 8 Cal.App.4th 1000.) *People v. Ceballos*, (1974) 12 Cal.3d 470, 476-484; *Long Beach Police Officers Assn. v. Long Beach*, (1976) 61 Cal.App.3d 364.

RELEVANT CAL CRIM INSTRUCTIONS: (ANNOTATED)

CAL CRIM INSTRUCTION 505 – Relevant paragraphs

JUSTIFIABLE HOMICIDE: SELF-DEFENSE OR DEFENSE OF ANOTHER

A person is not guilty of Homicide if he/she was justified in killing/attempting to kill someone in self-defense or in the defense of another. A person acts in lawful self-defense or defense of another if:

1. A person reasonably believed that he/she or another person was in *imminent danger* of being killed or suffering great bodily injury.
2. A person reasonably believed that the *immediate use of deadly force* was necessary to defend against that danger; AND
3. A person used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. A person must have believed there was *imminent danger of death or great bodily injury* to himself/herself or someone else. A person's belief must have been reasonable and he/she must have acted only because of that belief. A person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If a person used more force than was reasonable, the attempted killing or killing was not justified.

USE NOTES: "*Imminent peril/danger*" as used in these instructions, means that the peril must have existed or appeared to the person to have existed at the very time the fatal shot was fired. The peril must appear to the person as immediate and present and not prospective or even in the near future. An imminent peril is one that, from appearances must be instantly dealt with. *People v Aris (1989) 215 Cal App.3rd 1178; People v Scroggins (1869) 37 Cal. 676.*

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

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or another person and, if reasonably necessary, to pursue

an assailant until the danger of death/great bodily injury has passed. This is so even if safety could have been achieved by retreating.

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

CAL CRIM 507

JUSTIFIABLE HOMICIDE: BY PUBLIC OFFICER – Relevant Paragraphs

A person is not guilty of Attempted Homicide or Homicide if he/ she attempted to kill/killed someone while acting as a public officer/ or obeying a public officer's command for aid and assistance. Such an attempted killing/killing is justified, and therefore not unlawful, if:

1. A person was a public officer/ or obeying a public officer's command for aid and assistance;

2. The attempted killing/killing was committed while taking back into custody a convicted felon [or felons] who had escaped from prison or confinement, arresting a person or persons charged with a felony who was resisting arrest or fleeing from justice, overcoming actual resistance to some legal process, or while performing any other legal duty.

3. The attempted killing/killing was necessary to accomplish one of those lawful purposes; AND

4. The person had probable cause to believe that another person posed a threat of death or great bodily injury, either to the person or to another person [or that *the person killed* had committed *a forcible and atrocious crime and that crime threatened the person or others with death or great bodily injury*.

A person has *probable cause* to believe that someone poses a threat of death or great bodily injury when facts known to the person would persuade someone of reasonable caution that the other person is going to death or great bodily injury to another. An officer of a local Police or Sheriff's Department is a *public officer*.

Great Bodily Injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

ANALYSIS AND CONCLUSIONS:

Use of Deadly Force by Deputy Stephen Sullivant – San Bernardino County Sheriff’s Department on February 1, 2017 – against Michael David Russo

An extensive and exhausted review of all the facts and circumstances leading up to the shooting death of Michael David Russo by Deputy Stephen Sullivant of the San Bernardino County Sheriff’s Department, has been completed.

This analysis is predicated and governed by well-established principles of law enumerated above regarding a police officer’s authority to detain a person based on a “reasonable suspicion” the person was involved in criminal activity, the authority of an officer to arrest a person based on “probable cause”, and the use of reasonable or deadly force under the authority of both US Supreme Court precedent and California Law, to effect that arrest, using all reasonable force necessary, including deadly force. This analysis is further premised on the long standing principles of the right of self-defense and the defense of others and completed bearing in mind the broad discretion that must be afforded to police officers who face a tense situation having to make split second decisions under the circumstances presented them and that “reasonableness must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,” (Graham, supra).

On February 1, 2017, at approximately 7:53 PM, San Bernardino County Sheriff’s Department Central Station received an Automated License Plate Reader Alert of a stolen vehicle at the intersection of Highland and Victoria Avenues in San Bernardino, Ca. possibly headed into the San Manuel Indian Resort and Casino. Sheriff’s Deputies Stephan Sullivant and Alfredo Lopez from the Sheriff’s Central Station responded to the location to investigate. Prior to their arrival, San Manuel Casino Department of Public Safety Officers located the subject stolen vehicle inside the parking structure of San Manuel Casino located at 777 San Manuel Blvd. in Highland, California and notified responding deputies.

Deputies Stephen Sullivant and Alfredo Lopez located the un-occupied vehicle on the 4th level of parking lot structure #2 of the casino. A decision was made to place "Rat Trap" tire deflating devices under the vehicles tires and set up surveillance of the vehicle and wait for the occupants to return. The tactical plan was for Deputy Lopez to remain in his patrol vehicle to conduct a felony traffic stop if necessary and Deputy Sullivant would approach on foot. Both were to arrive simultaneously and apprehend the suspects prior to them entering the car. Earlier surveillance video captured the suspect gray Nissan Altima arriving at the Casino parking structure and male and female exiting the vehicle and entering the casino. Their clothing description was given to Deputies.

A short time later, the same female subject, later identified as and Sirikul Sawasdikul, was observed walking to the vehicle and wait at the passenger side driver's door. Moments later, the male suspect, later identified as Michael Russo, was seen walking toward the subject vehicle. Russo arrived at the driver's side of the vehicle and used the vehicle's automatic key lock to open the vehicle. Both he and Sawasdikul entered the vehicle. At this point, Deputy Sullivant and Lopez had a "reasonable suspicion" and legal justification to detain Russo and Sawasdikul for further investigation of their possession and occupancy of the stolen Nissan Altima. These same facts substantiated and justified "probable cause" to arrest Russo and Sawasdikul for possession of the stolen vehicle as well. A white Nissan Altima simultaneously arrived at the location and waited next to the gray Altima, waiting to take the parking space.

Deputy Stephen Sullivant left his surveillance location in a stairwell of the parking structure and ran toward the suspect vehicle. He approached the driver's side door with his gun drawn attempting to effectuate the detention and arrest of Russo and Sawasdikul for their possession of the stolen vehicle.

Deputy Sullivant opened the door and reached in to grab Russo, yelling, "Hands, let me see your hands, hands, hands, hands." As Deputy Sullivant was at the driver's side door of Russo's vehicle, Deputy Alfredo Lopez drove his patrol unit with emergency lights on to Sullivant's location and stopped just behind and to the right of Russo's vehicle. Russo ignored Deputy Sullivant's commands and rapidly accelerated the vehicle backwards out

of the parking space pinning Deputy Sullivant between the door and door frame of the vehicle, dragging him backwards approximately 20 feet.

Deputy Sullivant was shocked he was not run over and underneath the car and believed Russo would kill him. A review of the surveillance video of this incident substantiated Deputy Sullivant's beliefs were reasonable under the circumstances he faced. Russo accelerated backwards out of the parking space dragging Deputy Sullivant with him, until he rammed the front end of Deputy Lopez's patrol unit with the rear end of his vehicle, knocking the patrol unit backwards. At this point, Russo was engaging in conduct likely to result in "*imminent danger of death or great bodily injury*" to Deputy Sullivant and Deputy Lopez.

The open driver's door of Russo's vehicle struck Deputy Sullivant in the back and caused him to hit the door frame. Deputy Sullivant was still trying to stop Russo grabbing at him inside the vehicle yelling "stop, stop, stop, stop, stop," however Russo accelerated forward. Fearing Russo was an "*imminent threat*" to himself and Deputy Lopez, Sullivant deployed lethal force and fired one shot at Russo through the opened driver's door. However, Russo did not stop and struck the white Nissan waiting to take his parking lot. The white Nissan backed away. Russo had now rammed two vehicles as he attempted to flee. Russo backed up and then accelerated forward just as Deputy Sullivant tried to open the door that was now locked.

Believing Russo was still an "*imminent threat of death or great bodily injury*", Sullivant fired a second shot into the driver's side door, shattering the driver's side window. The second shot still failed to stop Russo who drove head onto the white Nissan, pushing it backwards as he turned and then fled down to the third level of the parking structure.

As Russo fled down the parking structure, witnesses estimated Russo's speed to be between 60-70 mph, still posing a threat of death or great bodily injury to others. Deputy Sullivant ran after Russo's vehicle, lost it, and returned to his patrol unit to pursue Russo. Deputy Lopez also followed pursuit however both were unaware of the location of Russo's

vehicle until they monitored radio traffic of a collision on the 3rd floor of the parking structure.

After entering the 3rd level of the parking structure, Russo apparently lost consciousness from his gunshot wounds and crashed into several parked and unoccupied vehicles ending the immediate threat Russo presented. Deputies located the collision site and Russo was found slumped over onto the passenger's seat unresponsive. The female passenger, Sawasdikul, was pinned in the vehicle and screaming. Russo succumbed to his gunshot shot wounds.

Based on the "***imminent and deadly threat***" Deputy Sullivant faced as Russo dragged him backward with his vehicle pinning him between the door and door frame, Sullivant's reasonable believe Russo was a deadly threat to himself and others, Russo's ramming of Deputy Lopez's patrol unit, and Russo twice striking the white Nissan in his attempt to flee, the use of deadly or lethal force by Deputy Sullivant under these circumstances was objectively reasonable and legally justified. This conclusion is based on well-established principles of law enumerated by the United States Supreme Court governing the use of deadly force. The use of deadly force by Deputy Sullivant was further justified in self-defense and/or in the defense of others, and warranted under the circumstances Deputy Sullivant encountered with Russo on the evening of February 1, 2017, at the San Manuel Casino.

Based on an "***objective reasonable standard***", it is clear a reasonable person/officer faced with the same threat of death or great bodily injury as Deputy Sullivant faced, **would have used** deadly force under these circumstances.

There is insufficient evidence under the facts and circumstances examined in this incident to warrant a finding of any criminal liability against Deputy Sullivant who had a reasonable and objective belief Russo was an "***imminent threat of death or great bodily injury***" to himself or others. Deputy Sullivant acted in "***self-defense and in the defense of others***" in utilizing lethal and deadly force against Russo because of the very real and apparent imminent threat of death or great bodily injury, Deputy Sullivant was confronted

with during his encounter with Russo.

In conclusion, the shooting death of suspect Michael David Russo by Deputy Stephen Sullivant in this instance was a “**justifiable homicide committed by an officer in the performance of his lawful duties**”. The use of deadly force under these circumstances was in self-defense or in the defense of others, not unreasonable, legally justified, and there is **insufficient evidence beyond a reasonable doubt, to establish that it was not.**

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