

INTEROFFICE MEMORANDUM

DATE: February 17, 2009 **PHONE:** 945-4221

FROM: David M. Hidalgo
Supervising Deputy District Attorney
Rancho/Chino Criminal Divisions



TO: Dennis D. Christy
Assistant District Attorney

James B Hackleman
Assistant District Attorney

John P. Kochis
Chief Deputy District Attorney
West End Division

SUBJECT: **Officer Involved Shooting Death/Injury - Fatal**
Involved Agency: San Bernardino County Sheriff's Department
Involved Officers in Shooting: Deputy Allen Iniguez - Fontana Station, Deputy Stephen Gomez - Fontana Station, Deputy Charles Peterson-Rancho Station, Deputy Nicholas Clark - Rancho Station,
Deceased: Anthony Roland Rodriguez, DOB: 6/17/72, Rialto, Ca.
Date and Time of Incident: 4/24/08 - 0359 Hours
Investigating Officer: Det Steve Pennington - San Bernardino County Sheriff's Department - Specialized Investigation Division - Homicide Detail
SBSD DR#: 600800144
SBSD H#: H-25-08
D.A. STAR # 2008-34457

FACTUAL SUMMARY OF CASE:

On April 24, 2008, at approximately 0359 hours, Deputy Nicholas Silva of the San Bernardino County Sheriff's Department – Central Station, was on duty in a marked Sheriff's Patrol Unit in the vicinity of Baseline and Tippecanoe streets in San Bernardino, when he observed a 2006 Nissan Altima, license # 5wwz217 driven by a Hispanic male, swerve, leave the roadway, and then swerve back on the road. Deputy Silva followed the vehicle as it continued to weave and he believed the driver could possibly be under the influence of a controlled substance or alcohol. Deputy Silva initiated a traffic stop of the suspect vehicle and observed the driver reach under the front passenger area as it pulled over. Unbeknownst to Deputy Silva at the time, the suspect driving was armed with a .10 mm semi automatic handgun. As Deputy Silva exited his vehicle, the suspect vehicle fled the traffic stop. He and another SBSD unit

pursued the vehicle through the City of San Bernardino as they witnessed the suspect vehicle run several red lights, stop signs, nearly collide with other vehicles, and speeding. The vehicle eventually entered the S/B lanes of the 215 freeway traveling at speeds up to 100 mph in light traffic. The suspect led pursuing units East and West bound on the 10 freeway, eventually went N/B 215 to the 210 E/B, back W/B at which time CHP units joined the pursuit.

The suspect vehicle traveled at speeds from 95 to 100 mph going S/B on N/B lanes of the 215, E/B on W/B, lanes of the 210 and was driving with such a reckless and conscious disregard for life and the safety of others, that CHP Officers terminated their pursuit of the vehicle as it traveled E/B on the W/B lanes of the 210 freeway. The suspect vehicle eventually headed S/B 215, and then W/B on the 10 freeway, traveling at speeds up to 100 mph. The driver was also observed reaching under the front seat. Fontana Sheriff's Units monitored and joined the pursuit as the vehicle sped past Sierra Ave. W/B on the 10 Freeway. Rancho Sheriff's Units also joined the pursuit as it entered their jurisdiction. Five to six Sheriff's Units were now in pursuit of the suspect vehicle that exited the 10 Freeway at Mountain Ave and traveled N/B at speeds up to 80 mph. Deputies followed the vehicle, attempted to "PIT" the vehicle on two occasions, however were not successful in doing so.

The suspect vehicle reached the 210 Freeway at Mountain Ave. and proceeded N/B in the S/B lanes. Deputies initiated another "PIT" maneuver knocking it into the center divider where the vehicle became lodged. Deputies surrounded the vehicle with weapons drawn in an effort to stop the driver. The suspect was able to free the vehicle from the center divider and then rammed a Sheriff's Unit occupied by Sgt Don Atkinson from the Rancho Station as he was exiting his patrol unit blocking the S/B lanes of Mountain, just North of the freeway.

The suspect vehicle then backed up and once again headed towards Sgt Atkinson's unit a second time, however swerved around the vehicle and sped away into the path of Deputies standing just South of Sgt Atkinson's vehicle. As the suspect vehicle headed towards them, deputies opened fire as the vehicle accelerated across the freeway overpass and then crashed into the S/W freeway sound barrier wall and came to rest. The driver, suspect Anthony Rodriguez, was found unresponsive and slumped over in the driver's seat suffering from several gun shot wounds and injuries sustained as a result of the crash.

Responding Paramedics pronounced him dead at the scene. A loaded 10 mm Glock semi automatic handgun was located underneath his right thigh/buttocks area of Rodriguez. The pursuit lasted approximately one (1) hour through the cities of Redlands, San Bernardino, East Highland, Fontana, Rancho Cucamonga, and terminated with the fatal crash of the suspect vehicle in Upland.

DECEASED SUSPECT INFORMATION

Deceased Suspect: Anthony Roland Rodriguez

D.O.B.: 6/17/72 – Age 35

Description: Male Hispanic Adult – black hair, brown eyes, 6'1", 287 lbs.

Residence: Rialto, CA

CRIMINAL HISTORY

Suspect Anthony Roland Rodriguez:
D.O.B.: 6/17/72 – Age 35

CAUSE OF DEATH - AUTOPSY REPORT

Riverside County Coroner's Case # 2008-03195

Dr McCormick of the Riverside County Coroner's Office performed the Autopsy on the deceased, Anthony Roland Rodriguez, DOB 6/17/72.

Exterior Physical Examination:

Dr. McCormick noted a gunshot wound to the side of the left cheek in the front of the left ear. This appeared to be an entrance wound, traveling back to front, slightly downward, exiting at the lower left side of the jaw. There was a gunshot entry wound to the left hip of Rodriguez entering left to right. A total of four (4) gunshot wounds to Rodriguez were noted. There was a large cut on the left front knee, a large cut to the lower right leg, and a broken and deformed left ankle. The right forearm was also broken and deformed. There were multiple minor cuts that appeared to be vehicle glass on Rodriguez's face, chest arms and hands.

Internal Physical Examination:

During the autopsy, Dr McCormick noted the aorta leading to the heart was torn and there was a large amount of blood in the chest area. There was also extensive hemorrhaging to the liver and internal organs. Dr McCormick also noted two breaks in the spinal column.

Toxicology Report:

A Comprehensive Urine Drug Screen of Suspect Anthony Rodriguez revealed 31.1 mg of Methamphetamine in his system.

Cause of Death:

Dr McCormick determined the cause of death was not the gunshot wounds the deceased suffered. Each wound would have caused significant trauma to knock a person unconscious, however would not be a fatal injury in and of itself as none of the bullet entries struck any vital organs. There was massive blunt force trauma to Rodriguez's chest, heart, and other vital organs that were caused as a result of Rodriguez's vehicle striking the freeway sound barrier wall. Dr McCormick opined the deceased died within a matter of seconds after impact.

INVOLVED WEAPONS AND SHOTS FIRED

Deputy Allen Hernandez Iniguez- Fontana Substation: Glock Model 21, .45 caliber semi-automatic handgun. The handgun had 12 rounds in the magazine with one cartridge in the chamber for a total of 13 rounds. Nine (9) rounds were located in weapon, indicating Deputy Iniguez fired four (4) rounds from his weapon at suspect vehicle.

Deputy Stephen Gomez – Fontana Substation: Glock Model 21, .45 caliber semi-automatic handgun. Nine (9) .45 cal cartridges were located in the magazine and one in the chamber for a total of ten (10) rounds in weapon with a 13 round magazine capacity with one in the chamber totaling 14 rounds indicating Dep Gomez fired four (4) rounds at the suspect vehicle.

Deputy Charles Peterson – Rancho Station: Glock Model 21, .45 Cal semi-automatic handgun. 13 round magazine with one in the chamber for a total of 14 rounds. Eight (8) rounds located in magazine and one (1) round in the chamber indicating Dep. Peterson fired five (5) times at the suspect vehicle.

Deputy Nicholas Clark - Rancho Station: Glock Model 21, .45 Cal semi automatic handgun. 13 round magazine with one in the chamber for a total of 14 rounds. 9 live rounds located in magazine, one in the chamber for total of ten (10) rounds recovered indicating Deputy Clark fired four (4) times at suspect vehicle.

Suspect Anthony Rodriguez: A Glock Model 20, .10 mm semi automatic handgun was located beneath suspect Rodriguez's right thigh or buttocks area on the drivers seat. There was one live cartridge jammed in the chamber preventing the slide from moving and placing another live round in the chamber. The handgun had a fifteen (15) round magazine with thirteen (13) live .10 mm rounds.

Total number of shots fired at suspect vehicle: Deputies involved in the pursuit fired a total of thirteen (13) rounds at the suspect vehicle.

WITNESS STATEMENTS

1. Deputy Nicholas Silva – SBSB Central Station:

On April 24, 2009, at approximately 0359 hours, Deputy Nicholas Silva of the San Bernardino County Sheriff's Department – Central Station, was on duty in a marked Sheriff's Patrol Unit in the vicinity of Baseline and Tippecanoe streets in San Bernardino when he observed a 2006 Nissan Altima, license # 5wwz217 driven by a Hispanic male, swerve, leave the roadway, and then swerve back on the road. Deputy Silva followed the vehicle as it continued to weave and he believed the driver could possibly be under the influence of controlled substance or alcohol. Deputy Silva initiated a traffic stop of the suspect vehicle between Pacific and Baseline streets and observed the driver reach under the front passenger area as it pulled over. Unbeknownst to Deputy Silva at the time, the suspect driving was armed with a .10 mm semi automatic handgun.

As Deputy Silva exited his vehicle, the suspect vehicle fled the traffic stop. He and another SBS unit (Deputy Stallings) pursued the vehicle through the City of San Bernardino as they witnessed the suspect vehicle run several red lights, stop signs, nearly collide with other vehicles, and speeding. The vehicle eventually entered the S/B lanes of the 215 freeway traveling at speeds up to 100 mph in light traffic. Deputy Silva stated the suspect led pursuing units East and West bound on the 10 freeway, eventually went N/B 215 to the 210 E/B, back W/B at which time CHP units joined the pursuit.

Deputy Silva observed the suspect vehicle run several red lights and stop signs on University Ave. He further observed the vehicle travel at speeds from 95 to 100 mph going S/B on N/B lanes of the 215, E/B on W/B, lanes of the 210 and was driving with such a reckless and conscious disregard for life and the safety of others, that he was advised that CHP Officers terminated their pursuit of the vehicle as it traveled E/B on the W/B lanes of the 210 freeway. The suspect vehicle eventually headed S/B 215, then W/B on the 10 Freeway, traveling at speeds up to 100 mph. Deputy Silva notified other Fontana and Rancho Sheriff's Units of the pursuit. Deputy Silva monitored the rest of the pursuit by radio, heard traffic about the suspect ramming vehicles, and then heard the broadcast of shots fired.

Deputy Silva concluded his statement saying the suspect vehicle was a danger to the public due to driving on the wrong sides of the roadway, high speed, and other reckless maneuvers

2. CHP Officer Hope Maxson – Rancho Cucamonga Division:

On April 24, 2008, Officer Hope Maxson was on duty partnered with Officer Todd Maxson in a CHP Patrol Unit when they overheard radio traffic of the pursuit. They joined the pursuit as the suspect vehicle traveled E/B on the 10 Freeway, N/B 215, then E/B onto the 210 traveling in the W/B lanes. The vehicle then went N/B 215 where it exited at University Parkway. Officer Maxson attempted to PIT the vehicle, however was not successful. The suspect vehicle traveled N/B in the S/B lanes into oncoming traffic. They followed the vehicle as it then went S/B University, crossed State Street, running several stop signs at a high rate of speed. It then ran a red light at Highland Ave nearly T-Boning another vehicle in the intersection and then entered the 210 freeway traveling E/B on the W/B lanes. Because it was too dangerous, Officer Maxson was advised to terminate the pursuit.

3. CHP Officer Todd Maxson – Rancho Cucamonga Division:

Officer Todd Maxson essentially provided the same statement of Officer Hope Maxson.

4. Deputy Jeremy Dean – SBS – Rancho Cucamonga Police:

On April 24, 2008, at approximately 4:50 am, Deputy Dean was on duty in a marked Rancho PD/Sheriff's unit and monitored radio traffic of the pursuit headed W/B on the 10 freeway. He and Sgt Don Atkinson staged at the Vineyard Ave on ramp and joined the pursuit as the suspect vehicle passed them W/B I-10 Freeway. He observed

the vehicle weaving in and out of traffic cutting off several vehicles at approximately 80 mph. He overheard radio traffic of the suspect reaching down under the seat as he drove. Both he and Sgt Atkinson followed the vehicle as it exited N/B onto Mountain Ave. swerving in and out of traffic at 70 mph.

Deputy Dean observed another unit attempt to PIT the vehicle as it went across the 210 Freeway, however the vehicle continued N/B on the S/B lanes of Mountain Ave. The vehicle was pitted again and ended up on the center divider of Mountain Ave. He then observed the suspect vehicle break loose, head S/B and ram Sgt Atkinson in his patrol unit blocking the S/B lanes, at approximately 20 mph. He thought the pursuit was over and he and Deputy Clark approached the vehicle and then heard 3-4 gunshots.

The suspect vehicle then headed directly at him and Deputy Clark who fired at the vehicle and stated he thought it would have hit them and they would be dead. He then saw Deputy Clark fire two (2) more shots as the vehicle came within 3-4 feet of them. He then saw the suspect slump in the vehicle as it accelerated S/B Mountain across the freeway overpass and crash into the S/W sound barrier wall of the E/B Mountain exit. Deputy Dean did not fire his weapon because he was too close to Deputy Clark who did. After the suspect vehicle crashed, he checked the suspect for a pulse, which was negative.

5. Deputy Allen Iniguez – SBSB Fontana Station:

On April 24, 2008, Deputy Iniguez was working graveyard shift when he monitored radio traffic of a pursuit that SBSB Central Station was involved in. He picked up the pursuit as the suspect vehicle traveled W/B 10 Freeway at 4:50 a.m. at speeds between 70 and 100 mph, weaving between the number 1 and 4 lanes of the freeway. He, along with Deputy Stephan Gomez, joined the pursuit. He requested and was authorized to use a PIT maneuver as the pursuit exited N/B Mountain Ave. in Upland. The suspect vehicle traveled between 40 and 80 mph, weaving in and out of traffic in opposite lanes, almost causing several collisions, and with no regard for the safety of others.

The suspect vehicle approached the 210 Freeway at 80 mph and Deputy Iniguez observed the driver reaching under the front seat. Deputy Iniguez conducted another PIT maneuver, but the vehicle continued N/B in the S/B lanes of Mountain Ave. A third PIT maneuver was attempted, but was unsuccessful. Deputy Iniguez recalled seeing the suspect vehicle ram a patrol unit with another deputy next to it. He observed the suspect vehicle back up and almost hit another deputy and then speed away. He fired two times at the suspect's vehicle that continued S/B crashing into the S/W sound wall of the freeway. He approached the vehicle and observed the suspect driver to be unconscious and was later pronounced dead at the scene.

6. Deputy Stephan Gomez - SBSB Fontana Station:

Deputy Stephan Gomez was working graveyard shift on April 23, 2008, and monitored radio traffic of a vehicle pursuit by Central Station. He joined the pursuit W/B I-10 at Cherry Ave. in Fontana. The suspect vehicle traveled at speeds of up to 100 mph, weaving in and out of traffic, nearly causing several collisions, with no regard for

public safety. The suspect vehicle traveled N/B on Mountain Ave. at 80 mph, ran several red lights and observed and observed Deputy Iniguez attempt to PIT maneuver the vehicle. Deputy Gomez attempted a second PIT maneuver north of the 210 Freeway, however he lost control of his unit and struck a block wall. He exited his unit, drew his service weapon, along with other deputies, giving commands for the driver to exit.

The suspect vehicle then accelerated and intentionally rammed a patrol unit occupied by Sgt. Atkinson. The vehicle then continued S/B towards him and he fired 2-3 rounds at the vehicle while it was 10-15 feet from him. He then observed the vehicle crash at the S/W sound wall of the freeway. He fired his weapon, as he believed the suspect vehicle was trying to "take out" Sgt. Atkinson and another deputy in the path of the vehicle and believed he was in "danger's way."

7. Deputy Nicholas Clark - SBSB Rancho Station:

Deputy Clark was assigned to graveyard shift on April 24, 2008, and monitored radio traffic of Fontana deputies in pursuit. He and Deputy Peterson rolled Code Three to the 10 Freeway and observed the suspect vehicle traveling at speeds up to 100 mph, traversing all lanes of traffic, cutting off other vehicles and almost causing several collisions. He followed the suspect vehicle N/B on Mountain Ave. at estimated speeds of up to 100 mph. As the vehicle reached the 210 over pass, it went out of control and stopped on the curb. He then observed the suspect vehicle drive head-on into Sgt. Atkinson's unit. The suspect vehicle then drove directly at him as he stood in the street. He fired four times at the suspect vehicle, which crashed into the S/W sound wall.

8. Deputy Charles Peterson - SBSB Rancho Station:

On April 24, 2008, Deputy Peterson was assigned to the graveyard shift, along with Deputy Clark and monitored radio traffic of SBSB Fontana units involved in a vehicle pursuit. They entered the W/B I-10 freeway at Haven Ave. where they joined the pursuit. Deputy Peterson observed the suspect vehicle traverse all lanes of the freeway, nearly collide with other vehicles, and travel up to 90 mph. He observed the vehicle exit N/B Mountain Ave., run several red lights, and weave into oncoming traffic at approximately 60-70 mph. He observed the "PIT" maneuvers and eventually saw the vehicle travel N/B in the S/B lanes of Mountain Ave. above the 210 Freeway. After the suspect vehicle landed on the center median, Sgt. Atkinson boxed it in with his patrol unit. The suspect vehicle then backed up at a high rate of speed, struck another vehicle, and then accelerated into Sgt. Atkinson's patrol unit.

The suspect vehicle continued to hit and push Sgt. Atkinson's unit, so he (Dep. Peterson) shot at suspect Rodriguez several times in fear that his and other deputies lives were in danger. He heard several other shots fired; saw Deputy Clark and other Fontana deputies shooting at the suspect. He then observed the suspect vehicle accelerate S/B until it struck the sound wall.

9. Sgt. Don Atkinson - SBSB Rancho Station:

Sgt. Atkinson was on duty as the watch commander on April 24, 2008, and monitored radio traffic of SBSB Fontana units involved in a vehicle pursuit. He staged at

Vineyard Ave. and the I-10 freeway where he joined the pursuit. He observed the suspect vehicle exit N/B Mountain Ave. at approximately 80 mph, weaving in and out of traffic, cutting off other vehicles, and run several red lights. He observed the unsuccessful PIT maneuvers and then saw the suspect vehicle drive N/B in the S/B lanes of Mountain Ave. and spin out of control, landing in the center median. He continued toward the suspect vehicle and heard the engine revving and then drive straight at him ramming his patrol unit. At that point, he heard gunshots and began to exit his car. He then observed the suspect vehicle back up and come at him again, however the suspect vehicle drove around his unit. He then observed the vehicle crash into the S/W sound wall. He drove to the suspect vehicle and observed the suspect with gunshot wounds to the left jaw and several bullet holes in the car.

Sgt. Atkinson observed a small engine fire erupt, but it was quickly extinguished. AMR personnel arrived on scene and pronounced suspect Anthony Rodriguez dead at the scene. Sgt. Atkinson stated he did not fire at the suspect vehicle as Deputy Clark was already shooting at it. He was in fear for his life after his patrol unit was rammed the first time and then narrowly missed the second time.

10. CHP Officer Daniel Hollywood - San Bernardino Division

Officer Hollywood was on duty April 24, 2008, with Officer Dan Maloney, and monitored radio traffic of SBSB units involved in a vehicle pursuit. He caught up to the pursuit N/B 215, pursued the vehicle E/B 210 at speeds up to 95 mph. The vehicle continued E/B 210, exited at Baseline Ave., then traveled E/B in the W/B lanes showing no regard for public safety. He pursued the vehicle to the area of University Ave. to State St. at speeds up to 90 mph. He observed the suspect vehicle run two (2) stop signs, a red light and then enter the 210 Freeway going E/B in the W/B lanes.

CHP Officers terminated the pursuit as it became too dangerous for officer and public safety. Officer Hollywood was also advised by CHP dispatch that the suspect was seen reaching underneath the seat.

11. CHP Officer Dan Maloney - San Bernardino Division

Officer Maloney was on duty on graveyard shift partnered with Dan Hollywood April 24, 2008. They monitored radio traffic of SBSB involved in a vehicle pursuit. They joined the pursuit N/B 215, along with Officers Hope and Todd Maxson and observed the vehicle traveling at speeds up to 110 mph. Officer Maloney observed the vehicle travel E/B in the W/B lanes of the 210 freeway. A PIT maneuver was attempted on the vehicle at University Ave., but was unsuccessful. He observed the suspect vehicle run several red lights, nearly broad-siding a car at Highland and State Streets. He terminated the pursuit after the suspect vehicle traveled E/B in the W/B lanes.

12. CHP Sgt. Eric Robles - San Bernardino Division

Sgt. Robles was the on-duty watch commander on April 24, 2008, and picked up the pursuit of the suspect vehicle E/B 210 in San Bernardino traveling approximately 95 mph. He described the same events, as did Officers Hope and Todd Maxson. After the vehicle traveled E/B in the W/B lanes of the 210 Freeway, he ordered the pursuit terminated due to the suspect's erratic and dangerous driving.

13. Detective M. Pederson - SBSD Homicide Division

Detective Pederson processed the crime scene of the suspect vehicle. He observed severe collision damage to the vehicle, as well as observing the suspect dead in the vehicle. The suspect had a gunshot wound to the left jaw, left ear, and two gunshot wounds to the back of his head. Detective Pederson located a Glock Model 20 .10mm semi-automatic handgun lying on the driver's seat, underneath suspect Rodriguez's right leg. There was one live cartridge stuck in the chamber and 13 live rounds in the magazine. He then observed fire personnel from Upland Fire Department extract the suspect from the vehicle.

14. Civilian Witness #1

This witness was an off-duty LAPD officer on the way to work in the N/B #2 turn pocket of the W/B Mountain Ave. 210 on-ramp. He observed the suspect vehicle attempt to enter the freeway, but it struck the front end of his vehicle. The suspect vehicle proceeded N/B in the S/B lanes of Mountain Ave. where Rodriguez saw it ram two Sheriff's units. He heard the suspect vehicle rev its engine and then heard 6-8 gunshots. He then saw the vehicle crash into the S/W sound wall.

15. Civilian Witness #2

This witness left his residence in Redlands at approximately 4:10 a.m. and entered the 30 Freeway W/B at San Bernardino Ave. Near Baseline Ave. He saw the suspect vehicle driving E/B in the W/B lanes up to 80 mph. He saw several CHP and Sheriff's units in pursuit of the vehicle as it passed him at approximately 80-100 mph.

16. AMR EMT Mark Sormillon

EMT Sormillon was dispatched to a traffic collision at Mountain and the 210 Freeway at approximately 5 a.m. on April 24, 2008. He observed the suspect in the driver's seat of the vehicle slumped over on the seat. He detected no pulse or heart activity and pronounced suspect Rodriguez dead.

CHP DISPATCH RADIO TAPES

A copy of the CHP dispatch log tape was provided in this OIS investigation however is mostly inaudible.

SBSD RADIO DISPATCH TAPES

Copies of the SBSB dispatch log tapes of this incident were provided and coincide with statements provided by officers/deputies involved in this incident.

RELEVANT CASE LAW AND STATUTES

PROBABLE CAUSE TO ARREST:

Penal Code Section 835a provides:

Any peace officer that has reasonable 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 effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 836 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 or that he has committed a felony.

A warrantless custodial arrest of a person is reasonable under the Fourth Amendment whenever a police officer has "probable cause" to believe the person arrested has committed a criminal offense. United States v. Watson, (1976) 423 U.S. 411, People v. Kraft (2000) 23 Cal.4th 978; People v. Moore (1975) 51 Cal.App.3d 610; People v. Braun (1973) 29 Cal.App.3d 949. The probable cause standard applies to all offenses, from felonies to very minor criminal/traffic offenses punishable only by a fine. Atwater v. City of Lago Vista (2001) 532 U.S. 318, People v. McKay (2002) 27 Cal.4th 601.

To determine the constitutionality of a seizure "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." United States v. Place, (1983) 462 U.S. 696, 703; Delaware v. Prouse, (1979) 440 U.S. 648, 654; United States v. Martinez-Fuerte, (1976) 428 U.S. 543. We have described "the balancing of competing interests" as "the key principle of the Fourth Amendment." Michigan v. Summers, (1981) 452 U.S. 692. Because one of the factors is the extent of the intrusion, it is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out. United States v. Ortiz, (1975) 422 U.S. 891; Terry v. Ohio, (1968) 392 U.S. 1.

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. Brosseau v. Haugen (2004) 543 U.S. 194, This question "is governed by the 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 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.**; **Blanford v Sacramento County (9th Cir 2005) 406 F.3rd 1110; Quintanilla v City of Downey (9th Cir 1996) 84 F 3rd 353.** 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.**

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 an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will 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 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 JURY INSTRUCTIONS: (ANNOTATED)

CAL CRIM INSTRUCTION 505 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 or was in imminent danger of being suffering death or 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 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. The defendant 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.

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

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 serious physical harm, either to the person or to another person [or that *the person killed* had committed a *forcible and atrocious crime*. A person has *probable cause* to believe that someone poses a threat of serious physical harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause serious physical harm to another. An officer of a local Police Department is a *public officer*.

CAL CRIM 3470 (REVISED JUNE 2007) RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a Human Being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The 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. The person must have believed there was imminent danger of violence to himself/herself or someone else. The person's belief must have been reasonable and he/she must have acted 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 the person used more force than was reasonable, the person did not act in lawful self-defense/ or defense of another.

When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. 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 defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

ANALYSIS AND CONCLUSIONS

The Use of Deadly Force in shooting suspect Anthony Rodriguez in this incident must be analyzed on the above stated facts and enumerated principles of law regarding a police officer's authority and justification to use Lethal Force. It is further guided by applicable case law and statutes of an officer's authority to arrest a suspect based on probable cause to believe a crime or other traffic offenses has been committed in or out of his presence. This authority, under both US Supreme Court precedent and California Law, affords police officers broad discretion to effect that arrest using all reasonable force necessary "**including deadly force**" and the right to self defense or the defense of others. This analysis is also guided by the principle that police officers must be afforded the same broad discretion when faced with a tense situation 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.**)

With these principles in mind and reviewing the totality of circumstances of the vehicle pursuit of suspect Anthony Rodriguez, it is unequivocal that the use of deadly force in this instance was objectively reasonable, warranted, and authorized under the relevant case law. Deputies Iniguez, Gomez, Clark and Peterson were legally justified in using deadly force to terminate a situation that posed an immediate threat and danger to inflict great bodily injury or death to the officers involved in this pursuit as well as to the innocent drivers of the vehicles he nearly collided with.

The approximate one-hour pursuit of the suspect vehicle driven by Anthony Rodriguez began when Deputy Silva attempted to stop his vehicle in the City of San Bernardino because of its driving pattern and reasonable belief the driver may be under the influence of alcohol/drugs. After the stop, Rodriguez then fled and led officers on an extremely dangerous high-speed pursuit through the cities of Redlands, East Highlands, San Bernardino, Fontana, Rancho Cucamonga, and terminated in the City of Upland with the crash of his vehicle.

During the course of the pursuit deputies/officers observed Rodriguez drive in a conscious and willful disregard for the safety of others and the officers involved in the pursuit. He drove in such an erratic and dangerous manner, that CHP officers terminated their pursuit of the suspect vehicle. On numerous occasions, suspect Rodriguez engaged in high speed driving, drove S/B against N/B traffic, E/B against W/B traffic on the freeway, ran numerous stop signs and red lights on surface streets, caused several near collisions, and endangered the lives of many innocent drivers.

During the pursuit, Rodriguez was also repeatedly observed reaching underneath the front driver's seat, consistent with attempting to retrieve and/or conceal a weapon, posing a further objective reasonable threat to officers, based on their training and experience.

When deputies thought the pursuit was finally terminated and his vehicle was disabled on the center median of Mountain Ave., Rodriguez then willfully rammed the front of Sgt. Atkinson's patrol unit while he was still inside attempting to escape and posed a grave and immediate danger to Sgt. Atkinson. Rodriguez then backed up and accelerated toward the same vehicle, nearly striking Sgt. Atkinson as he was exiting his patrol unit. Suspect Rodriguez then drove directly into the path of Deputies Clark and

Dean, coming within 3-4 feet of them as he accelerated away from the scene. This action, as well, posed an immediate and grave danger to the lives of both deputies and justified Clark and other deputies, to open fire at the suspect vehicle. Deputy Iniguez, Gomez, Clark, and Peterson's application of deadly force in firing at suspect Rodriguez in his vehicle in an attempt to terminate a grave and immediate danger to officers involved in the pursuit, was objectively reasonable and justified under applicable case law precedent.

Under the facts and circumstances of this incident, and notwithstanding that the cause of death of suspect Anthony Rodriguez was not from any of the gunshot wounds inflicted, but from internal injuries caused from the crash into the freeway sound wall, the use of deadly force in shooting suspect Rodriguez, was "objectively reasonable" under the 4th Amendment and a lawful and justifiable Use of Deadly Force by a Police Officer in the performance of his duties, in self defense, or in the defense of others.

David M. Hidalgo
Supervising Deputy District Attorney

DATE

John P. Kochis
Chief Deputy District Attorney

DATE

Dennis D. Christy
Assistant District Attorney

DATE