

OFFICE OF THE DISTRICT ATTORNEY

October 2, 2020



REPORT ON THE OCTOBER 10, 2018,
SHOOTING OF MICHAEL JOHNSON
BY VENTURA COUNTY SHERIFF'S
SERGEANT RUSSELL KING AND
SHERIFF'S DEPUTY JUSTYN CZYRKLIS

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I.

INTRODUCTION

On October 10, 2018, at approximately 1:14 a.m., Ventura County Sheriff's Dispatch received two 911 calls regarding a single vehicle crash that occurred on East Hillcrest Drive just east of Duesenberg Drive in Thousand Oaks. The first caller, Linda Schottel, reported being awakened from her sleep to a loud crashing sound coming from the roadway. She looked outside her balcony and saw vehicle lights which led her to the conclusion that an accident had occurred. The second caller, Cyndi Horwitz, reported being awakened by a crashing sound. She looked out her window and saw a vehicle facing the wrong way.

At about 1:17 a.m., Deputy Garrett Frates arrived on scene and saw a red pickup truck, later identified as a 2006 Chevrolet Colorado truck. It had crashed into a wooden fence post on the north shoulder of East Hillcrest Drive. The vehicle was off the roadway on the dirt shoulder facing eastbound near the westbound lane. Deputy Frates exited his vehicle and observed a male, later identified as Michael Johnson (DOB 9/13/92), standing near the driver's door of the truck. As Deputy Frates approached, he observed Johnson holding a knife and cutting his own wrists and forearms. Not knowing Johnson's intentions and because he was holding a deadly weapon, Deputy Frates pointed his firearm at Johnson and repositioned himself behind his patrol vehicle. Deputy Frates attempted to communicate with Johnson, but Johnson did not acknowledge him. Johnson continued to stand near the driver's door and cut himself. Deputy Frates broadcasted to Sheriff's Dispatch that he had a suspect at gunpoint who was holding a knife and was cutting himself.

Sergeant Russell King and Deputy Justyn Czyrkliis arrived on scene within two minutes. Sergeant King parked in the middle of East Hillcrest Drive and pointed the headlamps of his vehicle towards the truck to illuminate the truck and Johnson. Deputy Czyrkliis parked on the south side of East Hillcrest Drive behind Sergeant King's patrol vehicle. Deputy Czyrkliis obtained a less-lethal shotgun and was armed with an AR-15 rifle, which

was slung on the front of his body and not used during the incident. Sergeant King armed himself with his pistol. Deputy Czyrkliis and Sergeant King stood near the front passenger door of Sergeant King's patrol vehicle. Deputy Frates informed them Johnson was using a knife to cut himself.

Johnson was standing on the driver's side of his truck and only his head was visible over the cab of the truck. Sergeant King and Deputy Czyrkliis moved northwest toward the curb of East Hillcrest Drive to better see what Johnson was doing, obtain cover for safety, render aid, and to get a better angle for the less-lethal shots if needed. Deputy Czyrkliis and Sergeant King yelled several times at Johnson to drop the knife. Johnson stared at them but did not respond. Johnson was holding the knife with a clenched right fist, with his right elbow elevated and cocked back with the knife pointed toward Deputy Czyrkliis and Sergeant King in a threatening manner and began walking towards the deputies. When Johnson was approximately 15 to 20 feet away from them, Sergeant King ordered Deputy Czyrkliis to shoot Johnson with the less-lethal shotgun. Deputy Czyrkliis shot him in the lower torso and legs four times with less-lethal bean bag rounds. The less-lethal rounds appeared to have no effect on Johnson as he continued walking towards the deputies with the knife raised up above his shoulder.

Deputy Czyrkliis and Sergeant King began moving backwards and Johnson then continued walking quickly towards them. They continued to yell at Johnson to drop the knife and stop but he was unresponsive to their orders. Johnson began closing the distance between them. As Johnson continued to walk towards Deputy Czyrkliis and Sergeant King, Deputy Czyrkliis told Sergeant King he was out of ammunition as he discarded the less-lethal shotgun to the ground. Sergeant King transitioned his pistol to his left hand and drew his taser with his right hand. However, Sergeant King perceived Johnson to be too close to use the taser. Sergeant King then shot eight or nine times at Johnson with his pistol. While Sergeant King was shooting at Johnson, Deputy Czyrkliis transitioned to his pistol and fired seven rounds at Johnson. As Johnson was shot with the final rounds, he fell to the ground. Johnson was still holding the knife when he landed face-up on the ground and was not moving. At Sergeant King's direction, Deputy Frates

approached Johnson and used his baton to knock the knife out of Johnson's hand. Deputy Frates, Sergeant King, and Deputy Czyrkliis rolled Johnson onto his right side and handcuffed him. Firefighters and paramedics were staged down the street and witnessed the entire incident. Once Johnson was secured in handcuffs, firefighters and paramedics began administering life-saving measures to Johnson. After Johnson was placed on a backboard for possible transportation to a hospital, paramedics found no signs of life and pronounced him deceased at 1:32 a.m.

Both Sergeant King and Deputy Czyrkliis were wearing body-worn cameras (BWC). They both activated their cameras when arriving at the scene. The BWC videos captured moments leading up to Sergeant King's and Deputy Czyrkliis' approach toward Johnson and Johnson's advancement towards them, which precipitated the shooting. The confrontation, use of force, and subsequent medical treatment were also captured on the video.

An autopsy was conducted by Chief Ventura County Medical Examiner Dr. Christopher Young. The autopsy revealed that Johnson had a total of 10 bullet wounds to his upper torso and arms. Johnson also had numerous lacerations on both of his wrists and forearms. An analysis of Johnson's blood by a contracted private forensic sciences laboratory revealed his blood alcohol content was 0.27 percent.

The District Attorney's Office has a 24-hour on-call officer-involved shooting team available to all Ventura County law enforcement agencies to assist in the investigation of officer-involved shootings. Once the District Attorney's Office was notified of the shooting, Supervising Deputy District Attorney Stacy Ratner, Senior District Attorney Investigator Tom Mendez and District Attorney Investigator Heather Tallent responded to the shooting scene and consulted with the investigating officers.

The Ventura County Sheriff's Office investigated the shooting, which included interviewing witnesses, collecting physical evidence, and photographing the area of the shooting.

On July 5, 2019, the Sheriff's Office investigation reports were submitted to the District Attorney's Office for a determination of whether the shooting of Michael Johnson was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

Supervising Deputy District Attorney Stacy Ratner was assigned to review this matter. In the course of her analysis, she examined approximately 500 pages of reports, materials, recordings, including interviews of police and civilian witnesses, diagrams, photographs, records, radio transmissions, body-worn camera video, surveillance video, and Unmanned Aerial Vehicle (UAV) video.

Based on the evidence available for review, the District Attorney's independent investigation, and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Michael Johnson by Sergeant Russell King and Deputy Justyn Czyrkli was justified and not a criminal act.

II. STATEMENT OF FACTS

A. 911 Calls

Linda Schottel lived at 3230 Wind River Circle which is located just southwest of where Michael Johnson's truck laid to rest after the collision on East Hillcrest Drive. Schottel explained she was asleep in her upstairs bedroom when she was awakened by a sound, she believed was a "car crash" at approximately 1:14 a.m. Immediately, Schottel stood up, grabbed her phone, and went out onto her balcony. Schottel's balcony was near the cinder block wall which divided her neighborhood from East Hillcrest Drive. The balcony had a partially obstructed view of East Hillcrest Drive due to some trees. Schottel said she saw car lights from her balcony and knew the lights were coming from the same area as the condominium complex driveway. She could not see the car due to

the trees; however, she knew a car was there because she could see its lights. Next, Schottel stated she could hear the vehicle “honking,” so she called 911. Schottel explained she stayed on her balcony for a few minutes. She also said it seemed like it “took a little while” for the police to arrive on scene. Schottel was worried the police had missed the traffic collision. Schottel heard the vehicle involved in the collision attempting to move. She described the noise as sounding like the vehicle’s “wheels were skidding in the dirt.” Schottel thought maybe the person involved in the traffic collision was able to free himself/herself and “left” which would explain why she believed the patrol unit drove by. Schottel went back inside her home to call her son. She returned to her balcony shortly thereafter.

About this time, Schottel explained she was standing back outside on her balcony for a couple of minutes when she heard somebody yell out three or four times, “Drop the knife.” On the third or fourth time Schottel heard the person holler “drop the knife,” she became concerned about standing outside on her balcony. Schottel said she “immediately thought there’s gonna be gunshots.” At this time, Schottel turned around and ran inside her house. As Schottel reached her bedroom door from the balcony, “shots started going off.” Schottel grabbed her dog and fell to the ground.

Schottel was unsure of how many shots she heard. She explained she might have heard “four or five shots” or perhaps she heard “six shots”; however, she was not sure because things became “blurry” at that point. Schottel did not hear any other statements other than “drop the knife.” Schottel stated the officer had to be yelling because she “heard it very plainly on the balcony.” Schottel said the “tone” of the person’s voice who repeatedly stated “drop the knife” scared her because she felt that something was going to happen. She also said, “He’s not gonna say it too many more times before something’s gonna happen.”

Cyndi Horwitz lived at 3244 West Sierra Drive. At approximately 1:14 a.m., she called 911 because she was awakened by a “screech” and a “crash.” She called 911 right after she heard the crash sound because she was concerned a person may have been injured.

She could see the crash location that was in the “open space” from her residence’s upstairs bedroom window. She further described the “open space” as a “hiking trail” or “nature space.” She could not clearly see what was going on because of the angle/position of her bedroom window. She saw a “car facing the wrong way.” Then she saw a police car’s big white light, but she did not see any people, police officers, or police cars. After police arrived, she did not see anything. She did hear the gunshots. She heard two shots and then heard several rapid-fire shots for a total of about 8 to 10 shots. Prior to the gunshots she heard the police say, “Put it down” and “Put your hands up.” She said this communication was over a “blow horn” and it occurred “right before the shots.” She did not hear anything after the shots were fired.

B. Witness Statements

Numerous individuals were interviewed, including the involved officers, emergency medical personnel, and civilian witnesses. Summaries of the most pertinent witness statements are set forth below.

1. Deputy Garrett Frates

At approximately 1:14 a.m., Deputy Garrett Frates was dispatched to the area of East Hillcrest Drive and Duesenberg Drive in reference to a possible injury accident. Once on scene, he observed a red truck with extensive front-end damage that had crashed through the wooden posts of the north side of East Hillcrest Drive. He turned his vehicle around to face westbound to block traffic. Once he exited his vehicle, he observed a male, later identified as Michael Johnson, standing on the driver side of the vehicle toward the front of the truck. As he began to approach Johnson, he saw Johnson raise both his hands to about shoulder level. He immediately noticed a knife in one of his hands as he began to cut his wrists and forearms with the knife.

Deputy Frates immediately repositioned to the rear passenger side of his patrol car for cover and drew his department-issued pistol. He tried to activate his body-worn camera at

this time, but it was later determined that it was never activated. He then advised dispatch via his handheld radio that he had one subject at gunpoint. As he pointed his pistol at Johnson, he began to give Johnson commands to drop the knife. Johnson ignored Deputy Frates' commands and continued to cut his wrists and forearms as he paced back and forth from the front to the rear of his truck. Deputy Frates retrieved the less-lethal shotgun from the rear of his patrol vehicle and loaded 5 bean bag rounds.

As Deputy Frates pointed the less-lethal shotgun at Johnson, Deputy Frates retreated to the rear of his vehicle to maintain a safe position. Shortly after that he repositioned to the driver side of his patrol vehicle to gain a better view of Johnson.

As he was repositioning to the driver side of his patrol vehicle, he saw Johnson walking toward the street, through the opening of the damaged fence posts. He saw Sergeant King and Deputy Czyrkliś to his left side, approximately 20 feet away, and could hear them giving Johnson commands to drop the knife. Johnson continued to ignore their commands and was now walking toward Sergeant King and Deputy Czyrkliś. Fearing Johnson was going to use the knife against them, Deputy Frates fired one bean bag round which struck Johnson in the mid-section of his body. As he fired, he saw Deputy Czyrkliś fire his less-lethal shotgun as well. Deputy Frates could see the bean bag rounds striking Johnson, but they did not have any effect on him.

Johnson continued to advance towards Sergeant King and Deputy Czyrkliś with the knife still in his hand. Deputy Frates then heard Deputy Czyrkliś yell something to the effect of, "I'm dry," then he heard several gun shots. He understood the comment, "I'm dry" to mean that Deputy Czyrkliś was out of bean bag rounds. He saw Johnson begin to stumble and fall forward onto the ground. He did not see who fired their gun or recall how many shots were fired.

Once Johnson was lying on the ground, Deputy Frates continued to give him commands to drop the knife, which was still in his hand. Sergeant King, Deputy Czyrkliś and Deputy Frates approached Johnson and Deputy Frates used his baton to hit the knife from

Johnson's hand. Once the knife was away from Johnson, he secured him into handcuffs and flipped him onto his stomach to conduct a search for weapons. He then asked for fire personnel to enter the scene and render aid to Johnson. Fire personnel applied medical leads to Johnson's body to assess his vital signs, but quickly pronounced Johnson deceased.

2. Deputy Justyn Czyrkliis

At the time of the shooting, Deputy Justyn Czyrkliis had been a sworn peace officer with the Ventura County Sheriff's Office for six years. Deputy Czyrkliis had been assigned to the Thousand Oaks Police Station as a patrol officer for the past two years. On October 9, 2018, he was working "dawn shift" and began his shift at about 7:00 p.m. On that night, he was assigned to patrol and was wearing a standard patrol uniform identifying himself as a Ventura County Sheriff's deputy.

While patrolling the area of Thousand Oaks Boulevard and Rancho Road, Deputy Czyrkliis and Deputy Frates were dispatched "Code 3," which indicates lights and sirens should be used, to an injury traffic collision on East Hillcrest Drive at Duesenberg Drive. While responding to the area, Deputy Czyrkliis heard Deputy Frates broadcast that he was on scene. Then he heard Deputy Frates broadcast he had one subject at gunpoint because the subject had a knife.

When Deputy Czyrkliis arrived on scene he saw Deputy Frates' patrol vehicle stopped in the westbound lane facing westbound. Deputy Czyrkliis saw a red truck in the dirt on the north shoulder of East Hillcrest Drive. Deputy Czyrkliis stopped his vehicle on the south curb line of East Hillcrest Drive. Deputy Czyrkliis exited the vehicle and retrieved his AR-15 patrol rifle. Sergeant King arrived and stopped his vehicle in the middle of the roadway a few feet ahead and offset from Deputy Czyrkliis' vehicle. Sergeant King told Deputy Czyrkliis to retrieve his less-lethal shotgun which he got from the trunk of his patrol vehicle. Deputy Czyrkliis loaded the less-lethal shotgun with less-lethal bean bag rounds. Deputy Czyrkliis and Sergeant King gathered near the front passenger door of

Sergeant King's patrol vehicle. Deputy Czyrkliis pointed the less-lethal shotgun toward the truck and Sergeant King pointed his pistol toward the truck. Because Deputy Czyrkliis had the less-lethal shotgun, Sergeant King was to act as his "lethal cover" during the incident.

Deputy Czyrkliis saw Johnson walking side to side near the driver's door of the truck. Deputy Frates told them that Johnson was using a knife to cut his own wrists. Sergeant King said, "Let's move." Deputy Czyrkliis was in front and Sergeant King was behind him. Deputy Czyrkliis moved across the street and toward the truck with Sergeant King. They were moving closer to Johnson to get a better look at him, to attempt to get him to stop cutting himself, and to provide medical attention if he needed it. Deputy Czyrkliis stood near the north curb of East Hillcrest Drive which he estimated was about 20 to 25 feet away from the rear of the truck. Johnson walked to the back of the truck and continually used the knife to cut his wrists. Deputy Czyrkliis yelled at Johnson several times to drop the knife. Johnson turned and looked in their direction and then began walking towards them. Johnson walked towards them while holding the knife up above his shoulder. The knife had a 3 to 4-inch blade and Johnson was gripping the knife in his right hand with a tight fist. Deputy Czyrkliis described Johnson's demeanor as having a "thousand-yard stare" toward them. He had an angry look on his face and that coupled with the manner he was holding the knife, and his movement toward them, caused Deputy Czyrkliis to believe that Johnson wanted to kill them, which scared Deputy Czyrkliis. Deputy Czyrkliis said he just wanted Johnson to drop the knife, and said Johnson just kept moving toward them without any verbal communication.

Johnson was approximately 15 to 20 feet away from Deputy Czyrkliis and moving toward them when he heard Sergeant King say, "Hit him." Deputy Czyrkliis understood that Sergeant King was telling him to fire the less-lethal shotgun at Johnson. Based on Sergeant King's order and Deputy Czyrkliis's own perception of the threat Johnson posed, Deputy Czyrkliis fired two less-lethal rounds at Johnson. Deputy Czyrkliis aimed for Johnson's lower extremities. Deputy Czyrkliis believed he had hit Johnson in the legs. After firing two less-lethal rounds, Deputy Czyrkliis saw the strikes had no effect on

Johnson because he continued walking toward them. Deputy Czyrkliis fired two additional less-lethal rounds at Johnson's lower torso and extremities with no effect. Despite being hit with four less-lethal rounds, Johnson continued walking toward the deputies. Deputy Czyrkliis ran out of less-lethal rounds in the shotgun and he told Sergeant King that he was "dry." Deputy Czyrkliis moved backwards, but Johnson kept taking bigger strides and quicker steps toward them. Johnson was gaining distance on and moving at a faster pace than Deputy Czyrkliis could move backwards. Deputy Czyrkliis believed Johnson was going to get close enough to him to stab him or Sergeant King.

Deputy Czyrkliis estimated Johnson was less than 10 feet away from him when he heard Sergeant King shooting at Johnson. After hearing the shots, he saw Johnson still walking forward with the knife in his right hand. Deputy Czyrkliis dropped the less-lethal shotgun and removed his pistol from the holster as he continued to back away. Deputy Czyrkliis pointed the pistol at Johnson's center mass and started shooting at him. Deputy Czyrkliis said he did not have time to aim, he was only trying to quickly fire rounds at Johnson's center mass because he was moving so quickly toward him. Deputy Czyrkliis shot Johnson because he believed Johnson was going to stab and kill him or Sergeant King. Deputy Czyrkliis estimated he shot four or five rounds from his pistol. He did not know how many rounds Sergeant King fired.

After shooting Johnson, Deputy Czyrkliis saw him fall to the ground so he stopped shooting. Johnson was still holding the knife in his right hand, but he was not moving. Deputy Frates used a baton to knock the knife out of Johnson's hand and Deputy Frates secured him in handcuffs. Deputy Czyrkliis saw firefighters and paramedics staged down the street so he called for them to respond. The firefighters and paramedics arrived, medically treated Johnson, and eventually pronounced him deceased.

3. Sergeant Russell King

At the time of the shooting, Sergeant Russell King had been a sworn peace officer for the Ventura County Sheriff's Office for approximately 23 years. He was assigned to the

Thousand Oaks Police Station as a patrol supervisor. On October 9, 2018, at about 5:15 p.m., he began his patrol shift. He was assigned to dawn shift and was wearing a standard patrol uniform.

While working patrol, he heard Sheriff's Dispatch broadcast a report of an injury collision on East Hillcrest Drive at approximately 1:14 a.m. He decided to drive in that direction in case the deputies needed assistance. Sergeant King heard Deputy Frates broadcast that he was on scene and had a subject at gunpoint who was possibly involved in the traffic collision. Sergeant King advised Sheriff's Dispatch that he was responding.

Sergeant King arrived on scene and saw a red truck on the north shoulder of the road which had collided into a fence. Sergeant King saw Deputy Frates' patrol vehicle on the east side of the traffic collision, so he stopped his patrol vehicle on the opposite side (the west side) of the traffic collision. Sergeant King positioned his vehicle in the middle of the roadway and faced his headlights and spotlight toward the red truck in an effort to illuminate the truck and the area around the truck. Sergeant King exited his patrol vehicle and saw Johnson standing near the driver's door of the truck. He observed Johnson pacing and using a knife to cut his arms; the cuts were bleeding. Sergeant King yelled, "Drop the knife, don't do this!" Johnson did not respond to the commands and did not say anything. Sergeant King saw Deputy Czyrkliis arrive with his AR-15 patrol rifle and ordered him to retrieve a less-lethal shotgun as well.

Deputy Czyrkliis and Sergeant King stood near the front of Sergeant King's patrol vehicle. Deputy Czyrkliis pointed the less-lethal shotgun toward Johnson while Sergeant King pointed his pistol toward Johnson. Sergeant King knew that he would be the "lethal cover" to Deputy Czyrkliis. Sergeant King could not see Johnson clearly because he was on the other side of the truck. Johnson was standing near the cab of the truck and he did not know whether Johnson had any other weapons inside of the truck. Sergeant King wanted to move closer to get a better angle for Deputy Czyrkliis to shoot the less-lethal rounds to subdue Johnson. Sergeant King expressed fear that he could not see Johnson in the event Johnson retrieved a gun from his truck.

According to Sergeant King, he and Deputy Czyrkliś moved diagonally northwest toward a light pole west of the truck with the purpose of getting a better angle for the less-lethal shotgun and to get cover for their safety. Sergeant King described the area lacking for cover except for his police vehicle. Sergeant King said he wanted Johnson to give up. Once Sergeant King and Deputy Czyrkliś were illuminated by Sergeant King's vehicle lighting, he saw Johnson look at them as they moved up. He described Johnson as having a "thousand-yard stare" and a determined look on his face. Sergeant King yelled at Johnson to drop the knife. Johnson appeared to be fixated on both he and Deputy Czyrkliś but did not communicate with them. Johnson then began walking toward them with the knife in his hand, with the blade in a fixed position pointing straight up. Sergeant King was not sure which hand Johnson was holding the knife with, but perceived it as threatening because of the way Johnson was holding the knife. Sergeant King saw the knife blade and described it as "shiny."

As Johnson walked toward them, Sergeant King told Deputy Czyrkliś to shoot Johnson with less-lethal rounds. Sergeant King heard Deputy Czyrkliś shooting the less-lethal rounds, but they had no effect and Johnson continued walking toward them. Sergeant King heard Deputy Czyrkliś exclaim he was out of less-lethal rounds. Sergeant King tried to draw his taser with his dominant right hand while holding the firearm in his left hand. Sergeant King believed he could possibly resolve this incident with a less-lethal force option. As Sergeant King drew his taser, he saw Johnson walking more quickly toward them. He realized there was not enough time to use the taser because Johnson was coming at them quickly. Sergeant King believed if he did not shoot Johnson, he would have stabbed one of them. Sergeant King shot Johnson with his pistol in his left hand. Even though he shot at Johnson, he noticed Johnson was still walking toward them. Sergeant King said he continued to shoot because the shots were not stopping Johnson and he feared that he was missing Johnson's body. This scared Sergeant King because he thought if he did not stop Johnson, Johnson would kill Deputy Czyrkliś. Sergeant King believed he shot nine rounds at Johnson. Sergeant King estimated Johnson was approximately three feet away from Deputy Czyrkliś when he

finally collapsed. Sergeant King believed Deputy Czyrkliis was holding an empty less-lethal shotgun during the incident. Sergeant King did not learn Deputy Czyrkliis used lethal force until after the incident occurred.

After Johnson fell, Sergeant King saw Johnson still holding the knife in his right hand. Sergeant King told Deputy Frates to use his baton to knock the knife out of his hand. After the knife was removed, Sergeant King assisted Deputy Frates with rolling Johnson onto his stomach and handcuffing him. Once Johnson was secured in handcuffs, Deputy Czyrkliis called for firefighters and paramedics to respond from their staging area down the street. Sergeant King began overseeing the scene and attempted to preserve evidence by making sure people were not accidentally moving items such as shell casings.

4. Grizelda Mejia

Grizelda Mejia lived in a residence at 3137 Hillcrest Drive. Her home is on the north side of Hillcrest Drive. She was sleeping in her bedroom when she was awakened by a loud crashing sound. She looked out of her bathroom window and she saw a vehicle in the dirt off the side of the road. She saw a male who she believed was the driver walking away from the truck toward the hillside. He stopped when the patrol unit arrived. He then started walking around the driver's side of the truck. She heard one of the deputies tell him something like, "buddy get down." She saw the driver throwing his hands in the air. Mejia believed he was "challenging" the deputies in a "threatening" manner. She saw two deputies with one deputy standing in front of the other one. The deputy standing in front was pointing a gun at the driver. She saw the driver advance towards the deputies. She estimated he was about 15 feet away from the deputies when the first deputy shot at him. She noticed that the driver kept walking toward the deputies as the deputy shot him. Mejia believed the deputy standing in front was the only shooter. She believed the deputy shot at the driver about five times before he fell to the ground. As the driver was falling to the ground, the deputy kept shooting at him. After he fell to the ground, the shooting stopped. She saw fire personnel arrive shortly after.

5. Ventura County Fire Captain Philip Corsi

Captain Philip Corsi was assigned as a fire captain to Medic Engine 31, which is comprised of a fire engine and a rescue pickup truck. His crew was dispatched to a traffic collision on East Hillcrest Drive at Duesenberg Drive on October 20, 2018 at approximately 1:16 a.m. His crew included the engineer and firefighters in the fire engine and two additional firefighters in the rescue truck. As they arrived on scene, he saw several Sheriff's patrol vehicles stopped in the middle of the roadway on East Hillcrest Drive. At first, the fire engine stopped the middle of the roadway behind the Sheriff's vehicles in anticipation of treating patients for traffic collision-related injuries.

Captain Corsi, who was in the front passenger seat of the fire engine, saw a red truck on the north shoulder of the roadway. He saw a male (Johnson) standing near the truck and using some kind of instrument to cut his right arm. Upon seeing Johnson cutting himself and the deputies draw their guns, Captain Corsi ordered both fire vehicles to back up. Captain Corsi's engine stopped in the center of the roadway approximately 30 yards behind their initial position. Due to the distance, he could not see what Johnson was using to cut himself. He saw the deputies had guns drawn. He saw one deputy with a less-lethal shot gun. As the deputies walked toward Johnson, Captain Corsi saw Johnson moving toward the deputies. Captain Corsi described Johnson's movements as running but not at a full sprint towards the deputies. He saw the deputies shoot Johnson. Corsi estimated that the deputies were approximately 20 feet away from Johnson when they shot him. Johnson fell to the ground. Initially, Captain Corsi believed the deputies only shot him with the less-lethal shotgun, but he later realized the deputies shot him with pistols. He saw one deputy use a baton to knock an unknown object out of Johnson's hand. Captain Corsi assumed the object was a knife. Once fire dispatch advised them that they were clear to enter the scene, Captain Corsi and his crew contacted Johnson and provided medical aid to him. Johnson was not moving and had no signs of life. Captain Corsi explained he did not hear anything because he had his headphones on, and he was listening to fire dispatch during the incident.

6. Ventura County Firefighter Kevin Lundgren

Firefighter Kevin Lundgren was assigned as a firefighter to Medic Engine 31 when his crew was dispatched to a traffic collision on East Hillcrest Drive at Duesenberg Drive. Firefighter Lundgren was driving the rescue truck. As they arrived on scene, he saw a red truck on the shoulder of the road which appeared to have been in a traffic collision. He saw three Sheriff's patrol vehicles stopped on East Hillcrest Drive. He initially stopped the rescue truck in the middle of the roadway. He saw a deputy run to a vehicle and grab an orange shotgun. Firefighter Lundgren placed the rescue truck in reverse and backed up away from the scene, coming to a stop approximately 40 yards west of where he had initially staged, but now adjacent to the north curb line facing eastbound. After he stopped the rescue vehicle, Firefighter Lundgren looked toward the scene. He saw a male (Johnson) using a knife to cut his forearms and wrists with a slashing motion. Firefighter Lundgren saw two deputies walk toward Johnson. He saw Johnson "charge" toward the officers with a knife in his hand. He saw the deputies backing up. He believed Johnson was quickly closing the distance on the deputies. At first, he saw Johnson walking towards the deputies, then he saw Johnson in a slow jog towards them. Firefighter Lundgren saw the deputies fire shots from their pistols at Johnson. He estimated the distance between Johnson and the deputies was consistently about 20 feet away but at the end Johnson was about 10 feet away from the deputies. Firefighter Lundgren saw Johnson fall to the ground. One of the deputies then used a baton to knock the knife out of his hand.

After the incident, the crew was told to enter the scene. Firefighter Lundgren assisted with medically treating Johnson who was not responding to the treatment. He placed a "defib monitor" on Johnson and attached the leads to his chest. There were no signs of life. Firefighter Lundgren and his crew placed Johnson on a gurney to prepare him for transport to the hospital. AMR paramedics arrived and decided not to transport Johnson. Firefighter Lundgren noticed Johnson suffered "obvious" gunshot wounds to the upper torso and had a broken left wrist. He explained he never heard any of the communications between the deputies and Johnson.

7. Daniel Berkowitz

Daniel Berkowitz lived and worked in Thousand Oaks. He did not previously know Johnson, but the two had met on the night of the shooting. On October 9, 2018, at approximately 10:00 p.m., Berkowitz went to the Crown and Anchor Pub located at 2891 East Thousand Oaks Blvd. He usually goes to the bar after work. He had never seen Johnson at the bar before. They began talking to each other. Johnson was talking about how he worked for the Moorpark College Police. He talked about having to tackle a student for having a weapon and about field sobriety tests. Berkowitz believed Johnson was very interested in law enforcement. Johnson did not seem depressed or suicidal, nor did he talk about any problems. Johnson never talked about police shootings or about other lethal use of force situations. Berkowitz observed Johnson consume several shots of whiskey and he believed Johnson was “pretty drunk.” Berkowitz felt that Johnson should not have been driving. When Berkowitz was leaving, he offered to pay for an Uber ride for Johnson, but Johnson declined. Johnson claimed that someone was coming to pick him up. Johnson left the bar first. As Berkowitz walked out into the parking lot, he saw a truck drive away. He remembered thinking that he hoped Johnson had not driven himself home.

8. Tiffany Williams

Tiffany Williams was working as a bartender at the Crown and Anchor English Pub the night Johnson was in the bar. She recognized Johnson from a photograph detective showed her and stated he was in the bar that night. She remembered that he initially ordered a beer and two double shots of whiskey. She asked him who the drinks were for and he told her they were just for him. She told him she would give him one beer and one shot, and they could go from there. She remembered him making friends with another guy at the bar and they had a couple of shots of whiskey and a couple of beers. She got off work at 11:00 p.m. and Johnson was still at the bar at that point.

9. Moorpark College Police Cadet Ryan Gutierrez

Gutierrez is a student at Moorpark College majoring in Criminal Justice. He also works as a police cadet at the college. He was hired along with Johnson and they began work towards the end of August 2018. Gutierrez had a class (Criminal Procedures) on Tuesday nights with Johnson. The time of the class was from 7:00 p.m. to 9:45 p.m. Gutierrez noticed that Johnson was not in class on October 9, 2018. Johnson's absence from the class was unusual and the class professor also took notice of Johnson's absence. Their shifts with the college police overlapped for two hours on Mondays and Wednesdays. Since they worked together for part of their shifts, they got to know each other. Gutierrez described Johnson as a "good guy" and "dedicated" to his job. Gutierrez recalled conversations he had with Johnson. The majority of the conversations were law enforcement related. Gutierrez never picked up on anything weird or odd which stood out to him about Johnson. Johnson never mentioned any medical issues, therapy, or taking any medication. Gutierrez also never observed Johnson taking any pills or medication. Gutierrez had worked with Johnson on Monday, October 8, 2018, Johnson seemed "normal" and there was nothing out of the ordinary. Gutierrez mentioned that he and Johnson had watched "less than lethal force" videos on YouTube that day. Johnson was on his phone some of the time but watched some of the videos with him. Gutierrez recalled the video was not long and involved five different scenarios.

A review of the video showed a compilation of real-life confrontations between police and suspects. Three of the scenarios showed suspects with knives advancing towards officers and in each the suspect was shot by officers utilizing less-lethal shotguns. In two of the scenarios, the less-lethal rounds did not subdue the suspect who was then shot by officers with their pistols.

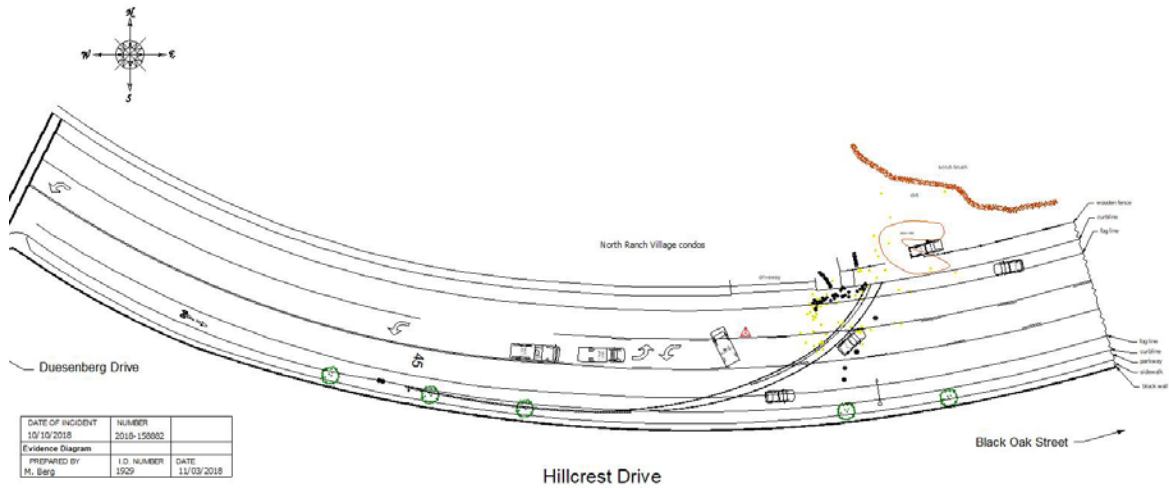
III. PHYSICAL EVIDENCE

A. Crime Scene

Prior to the shooting incident, Johnson's truck was involved in a single vehicle collision with numerous stationary objects on the north and south sides of East Hillcrest Drive, east of the intersection with Duesenberg Drive. After striking a wooden fence, Johnson's truck came to rest in the dirt shoulder on the north side of East Hillcrest Drive. The width of the dirt shoulder from the curb to the fence line is 10 feet. The shooting occurred in the westbound lane of East Hillcrest Drive.

This crime scene was confined to East Hillcrest Drive between the intersections of Duesenberg Drive and Black Oak Street within the city limits of Thousand Oaks. The scene was isolated to the 3100 to 3200 block of East Hillcrest Drive and portions of a dirt shoulder on the north side of East Hillcrest Drive. In this area, East Hillcrest Drive is a two-lane highway that runs primarily east to west. Both the eastbound and westbound lanes are separated by a two-way left turn lane, delineated by solid and broken yellow lines. The westbound vehicle travel lane is 15 feet wide. There is also an eastbound and westbound bike lane delineated by a solid white line. The bike lane is eight feet wide. The speed limit posted in this area of East Hillcrest Drive is 45 miles per hour. The intersection of East Hillcrest Drive and Duesenberg Drive is controlled by a traffic light. The intersection of East Hillcrest Drive and Black Oak Street is controlled by one stop sign on Black Oak Street.

A residential neighborhood makes up the south boundary of East Hillcrest Drive between Duesenberg Drive and Black Oak Street. A block wall and sidewalk separate this neighborhood from East Hillcrest Drive. East Hillcrest Drive is bordered on the north side by a townhouse/condominium complex named North Ranch Village. To the east of North Ranch Village is a field and open space. This open space is called the Hillcrest Open Space Preserve.

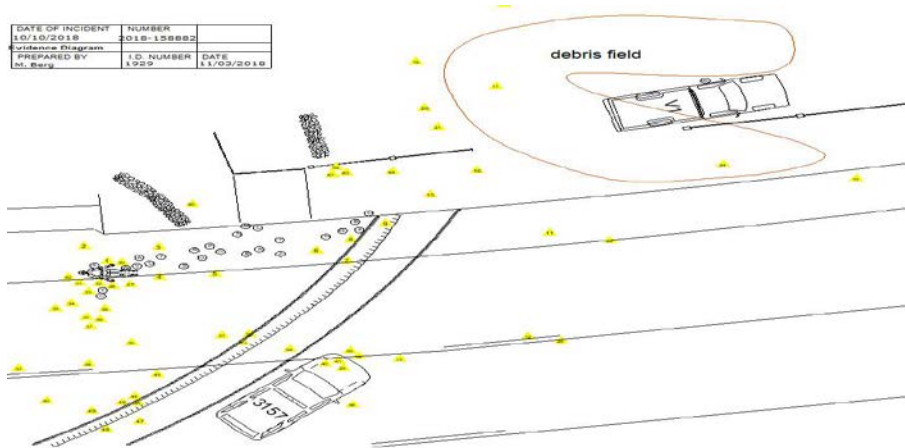


Factual diagram depicting the route travelled by Johnson’s vehicle on East Hillcrest Drive.

The traffic collision investigative report estimated Johnson’s vehicle was traveling between 57 and 60.7 miles per hour at the time of the collision. It appeared that Johnson failed to negotiate the curve in the road due to excessive speed and his intoxication. Johnson’s vehicle collided with the righthand curb and a tree. He then overcorrected away from the curb into the opposite lane and ultimately, he crashed through a wooden fence. His vehicle ended up off the roadway in the Open Space Preserve approximately 10 feet from the curb.



Photograph depicting the south curb line of eastbound Hillcrest Drive and tree Johnson hit before careening across the street.



Factual diagram depicting the crime scene and the location where Johnson came to rest after the shooting.

1. Michael Johnson's Vehicle

Michael Johnson's vehicle was found on the north shoulder of the 3100 to 3200 block of East Hillcrest Drive. The vehicle was identified as a red 2006 Chevrolet Colorado truck, California license plate #8G08147. The truck had sustained major damage to the front end.



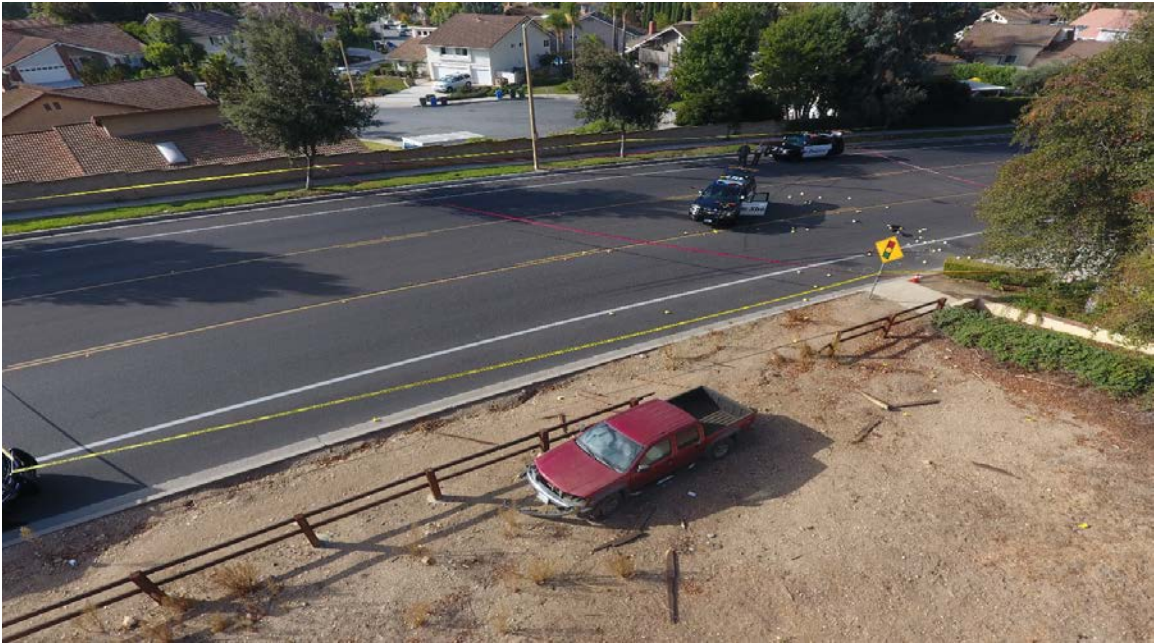
Photograph depicting damage to the front grill/bumper area of Johnson's truck as a result of colliding into the tree and wooden fence. The left front, left rear, and right rear tires were flat.

The photograph below depicts Sergeant King's patrol vehicle and its proximity to the area where Johnson was initially contacted. The skid marks in the roadway are from Johnson's truck.



Sergeant King's vehicle in relationship to Johnson's truck.

Sergeant King and Deputy Czyrkliis stood together near the right front of Sergeant King's vehicle. They moved from Sergeant King's vehicle toward the north curb line of East Hillcrest Drive.



Photograph depicting aerial view of crime scene.

2. Evidence Showing Officers' Use of Force

Johnson walked toward the deputies from the left rear tire area of his truck.

Deputy Czyrkliis fired four less-lethal shotgun bean bag rounds in three seconds while backing away from Johnson, who was advancing toward them with a knife in his right hand.



Photo markers 6, 7, 8 and 9 depicting less lethal shells from Deputy Czyrkli's shot gun. He was standing in this area when he shot these rounds at Johnson who was advancing towards him from the dirt area.

When Deputy Czyrkli ran out of less-lethal ammunition, he discarded the less-lethal shotgun on the ground. It landed on the bicycle lane, as depicted below.



Photo marker 5 depicting Deputy Czyrkli's less-lethal shotgun

Sergeant King drew his taser with his right hand, but he quickly perceived Johnson was too close to effectively use the taser. Sergeant King fired shots at Johnson with his pistol in his left hand. Simultaneously, Deputy Czyrkliis also fired his pistol at Johnson. Both Sergeant King and Deputy Czyrkliis were backing away from Johnson as Johnson continued walking toward them with the knife in his hand. Johnson collapsed with the knife in his right hand. The location of the taser was approximately 17.1 feet from Johnson's feet. Johnson collapsed in the roadway, adjacent to the bicycle lane. Johnson's body was moved slightly at the scene for restraint and medical intervention.

While backing away from Johnson westbound on East Hillcrest Drive, Sergeant King fired all of the ammunition in his pistol, then he dropped the taser (photo marker No. 58) and transitioned the pistol to his right hand to reload with a full magazine. Sergeant King's discarded magazine landed on the ground (photo marker No. 57). This magazine was approximately 20 feet away from Johnson's feet. Deputy Czyrkliis had separated a short distance from Sergeant King at this point and was approximately in the middle of the westbound lane, presumably closer to Johnson.



Photo marker 58 depicts Sergeant King's taser.



Photo marker 57 depicts Sergeant King's expended pistol magazine.

Deputy Frates hit Johnson's knife out of his hand with a baton after Johnson was shot.



Photograph depicts a green folding tactical knife with a 3-4" blade stained with blood.

3. Other Items Belonging to Michael Johnson

Miscellaneous items were found at the scene that belonged to Michael Johnson. Three purchase receipts were found in his pant pockets. One receipt was for gasoline at the Shell Gas at 3995 East Thousand Oaks Boulevard on October 9, 2018, at 7:01 p.m. The other two receipts were for alcoholic beverages at the Crown and Anchor English Pub. One receipt was in the amount of \$45.05 on October 9, 2018, at 11:39 p.m. and the other receipt was for \$54.70 on October 9, 2018, at 11:42 p.m. Investigators later learned the receipt for \$45.05 had been voided, but the other receipt was paid. The items on the receipt included two “805” 20-ounce beers and four shots of “Jameson’s” Irish whiskey.

Video surveillance from the Crown and Anchor Pub showed that Johnson arrived at the bar at 7:08 p.m. He left the bar on October 10, 2018, at 1:10 a.m. The bar is located approximately .46 miles from where Johnson crashed his truck on East Hillcrest Drive.

B. Body-Worn Camera Video Description

The officer involved shooting was captured on video cameras worn by Sergeant King and Deputy Czyrkliis. Sergeant King and Deputy Czyrkliis were standing side-by-side and their cameras captured similar viewpoints. The following is a summary of what both videos captured: Sergeant King stopped his vehicle in the middle of East Hillcrest Drive and the headlamps of the vehicle faced the truck. Deputy Czyrkliis stopped his vehicle on the south side of East Hillcrest Drive and behind Sergeant King’s vehicle. Sergeant King and Deputy Czyrkliis arrived on scene close in time with each other and exited their patrol vehicles. Deputy Czyrkliis held a less-lethal shotgun and Sergeant King possessed a pistol in his right hand. Sergeant King and Deputy Czyrkliis stood at the front passenger quarter panel of Sergeant King’s patrol vehicle. The patrol vehicle was just west of the red truck. The patrol vehicle was facing northwest toward the red truck. Lights from the patrol vehicle illuminated the rear portion of the red truck. Sergeant King and Deputy Czyrkliis pointed their firearms (less-lethal shotgun and pistol) toward the truck. Only Johnson’s head was visible from their position. Deputy Frates was

on the east side of the truck. Deputy Frates yelled at Sergeant King that Johnson was cutting his wrists. Sergeant King said, "Let's move up." Deputy Czyrkliis was in front and Sergeant King was slightly behind and to the right of him. Sergeant King and Deputy Czyrkliis walked from the center median area of the street toward the north curb west of the truck. As they walked up to the white roadway line/bicycle lane on the north side of East Hillcrest Drive, Johnson stood near the rear bed of the truck. Sergeant King and Deputy Czyrkliis stopped and stood in the north bicycle lane near the north curb. Sergeant King said, "Drop it." Deputy Czyrkliis said, "Drop the knife." Sergeant King yelled, "Drop it, drop it." Deputy Czyrkliis again yelled, "Drop the knife."

Johnson was looking directly at Sergeant King and Deputy Czyrkliis. He was holding the knife in his right hand at about shoulder height with the blade pointed toward the deputies. His elbow was cocked back giving the appearance Johnson was holding the knife in a threatening manner. Johnson began walking past the rear bed of his truck toward Deputy Czyrkliis. As he passed the truck toward Deputy Czyrkliis, Johnson raised and cocked his elbow back further and raised the knife more. Deputy Czyrkliis pointed his less-lethal shotgun at Johnson while he was ordering him to drop the knife. Deputy Czyrkliis was standing next to the curb while pointing the less-lethal shotgun at Johnson. Even though they ordered him to drop the knife, he did not comply. Johnson continuously moved in their direction despite having a shotgun and pistol pointed at him.

Johnson continued looking at Sergeant King and Deputy Czyrkliis. Sergeant King said, "One round down, one round down." Deputy Czyrkliis used the less-lethal shotgun to shoot at Johnson four times in a row. The less-lethal rounds impacted his lower torso and legs, but it appeared to have no effect on Johnson as he continued to walk more quickly towards the deputies, while maintaining a threatening posture with the knife in his hand. Deputy Czyrkliis and Sergeant King continued to back up as Johnson came towards them.

As Johnson walked in the direction of the deputies, his left shoulder was canted toward them and his right hand, which was holding the knife, was raised up near his head. Deputy Czyrkliis announced to Sergeant King that he had fired all his less-lethal cartridges. Sergeant King transitioned his pistol to his left hand and removed his taser

from his holster with his right hand. It appeared some of the less lethal rounds impacted Johnson, but he kept walking quickly toward Sergeant King and Deputy Czyrkliis. As Johnson closed the distance and came within approximately 10 feet of Deputy Czyrkliis, Sergeant King shot Johnson with his pistol.

Sergeant King shot approximately nine rounds with no pauses and his gun slide locked back indicating the firearm was out of ammunition. Sergeant King normally shoots right-handed, but Sergeant King held onto the taser in his right hand while shooting his pistol with his left hand. He dropped the taser on the ground to reload his pistol. Deputy Czyrkliis transitioned to his pistol and shot approximately seven times with no pauses. Although Deputy Czyrkliis and Sergeant King were side-by-side for most of the incident, they separated a short distance from one another while they were backing away from Johnson. Deputy Czyrkliis' body worn camera footage depicts him approximately in the center of the westbound lane of East Hillcrest Drive, which is consistent with Deputy Czyrkliis' estimate of him being 10 feet away from Johnson when Johnson collapsed in the roadway. Sergeant King backed away from Johnson southbound toward the two-way left turn lane of East Hillcrest Drive.

From the time Sergeant King and Deputy Czyrkliis started moving away from Sergeant King's vehicle to the time the last shot was fired was 19 seconds.

A total of 13 shots could be heard during the incident, however, based on the physical evidence, a total of 15 rounds were fired. It is believed a few of the rounds were fired simultaneously from Sergeant King's and Deputy Czyrkliis' pistols, causing the shots to sound as one. After approximately 15 rounds were fired, Johnson fell to the ground.

Deputy Czyrkliis broadcast to Sheriff's Dispatch, "Station 1, shots fired, shots fired."

Johnson lay on his back and kept holding the knife in his right hand. Sergeant King told Deputy Frates to use a baton to hit the knife out of his hand. Sergeant King and Deputy Frates walked up to Johnson, while Sergeant King provided cover for Deputy Frates. Deputy Frates used a baton to hit the knife out of Johnson's right hand. Johnson was not moving. Sergeant King told Deputy Frates to grab Johnson's right arm

and to roll him onto his stomach. Deputy Frates grabbed Johnson's right wrist and secured it with a handcuff. Sergeant King grabbed Johnson's left arm and rolled him onto his stomach. Deputy Frates handcuffed both of Johnson's hands behind his back.

Deputy Czyrkliś used his police radio to request paramedics to respond. Deputy McMahon arrived, cleared the truck, and relieved Deputy Czyrkliś. Deputy Czyrkliś stepped away from Johnson. Deputy Chiaramonte arrived on scene and stayed with Deputy Czyrkliś. Deputy Czyrkliś stood near Sergeant King's patrol vehicle until he was transported to the Thousand Oaks Police Station. Sergeant King stepped away from Johnson. Deputy Frates and Deputy McMahon stayed with Johnson. Firefighters and paramedics arrived and began medically treating Johnson. While medically treating him, paramedics placed him onto a backboard. After Johnson was on the backboard, paramedics determined he had died. Johnson's body remained on the backboard and at the scene.

C. Description of Firearms and Rounds Fired

Sergeant King carried a Sig Sauer P220 Elite .45 caliber pistol equipped with an eight-round magazine. After the shooting, his pistol was examined and found to have one round in the chamber and seven rounds in the magazine. Sergeant King had reloaded a fresh magazine during the incident and an empty magazine with a capacity of eight rounds was collected at the scene (photo marker 57). Deputy Czyrkliś carried a Sig Sauer P226 .40 caliber pistol which has a 12-round magazine. After the shooting, his pistol was examined and found to have a full magazine. Deputy Czyrkliś had reloaded after the shooting, because the suspect's vehicle had not been cleared and he wanted to make sure he had a full magazine in the event there was a further threat emanating from the truck. Six bullet fragments and 15 casings were collected at the scene. Eight of the

casings were fired from Sergeant King's pistol and seven were fired from Deputy Czyrkli's pistol.

D. Timeline of Events

The audio recording between deputies and dispatchers confirmed Deputy Frates arrived on scene at 01:17:08 hours on October 10, 2018. He arrived on scene within 20 seconds of being dispatched to the crash. About 24 seconds later, he announced it was a red truck that had crashed into a post. According to dispatch audio, Deputy Czyrkli announced his arrival on scene 50 seconds after Deputy Frates arrived. Six seconds after Deputy Czyrkli announced he was on scene, Deputy Frates announced he had Johnson at gunpoint. Sergeant King announced he was on scene 16 seconds later. Fourteen seconds after Sergeant King arrived, Deputy Frates announced that Johnson was cutting himself with a knife. Deputy Czyrkli broadcasted shots fired 44 seconds later. One minute and 15 seconds elapsed from the time deputies perceived Johnson as a threat (at gunpoint) to the cessation of the shooting.

E. Autopsy

On October 11, 2018, Ventura County Medical Examiner Dr. Christopher Young conducted an autopsy of Johnson's body. Johnson was wearing blue jeans, boxers, a gray Vans belt, Vans shoes, and a Casio watch. The front of the belt had an indentation from a possible projectile strike. Johnson had minor abrasions to the front of his forehead and the left side of his head. He had more than 15 minor lacerations to his left forearm. He had more than 20 minor and deep lacerations to his right forearm. The lacerations to his forearms appeared to be self-inflicted.

Johnson had multiple abrasions to his lower torso, upper torso, and legs which appeared to be caused by the impacts of the less-lethal projectiles. He had 10 bullet wounds to his upper torso and arms. Based on the locations of the bullet wounds, it appeared he was struck with eight bullets, as two wounds were from bullet re-entries. Three bullets were

recovered from his left chest area, right lateral torso, and right pelvic floor. No other bullets were found. Johnson suffered gunshot wounds to the aorta, the vena cava, the liver, and the stomach.

Dr. Young determined the cause of death was multiple gunshot wounds to the chest. A toxicology examination later determined Johnson had a blood alcohol concentration (BAC) of .27 percent at the time of his death. A toxicology screen of Johnson's blood tested negative for controlled substances.

IV.

SUSPECT MICHAEL JOHNSON'S BACKGROUND

Michael Johnson (DOB: 09/13/92) was a white male, 5 feet 10 inches, weighing 165 pounds. He lived in Thousand Oaks, had never been married, and had no children. The 2006 red Chevrolet Colorado pickup truck, California license number 8G08147, was registered to Michael. He was an active student at Moorpark Community College. On October 9, 2018, the night of the shooting. Johnson was scheduled to attend a class entitled "Procedures Justice System" between 7:00 p.m. and 10:00 p.m. However, he went to the Crown and Anchor Pub instead of attending class that night. Johnson was employed as a police cadet for the Moorpark College Police Department and was not scheduled to work on October 9, 2018. He was interested in a career in law enforcement and had filled out a few applications for employment with local police agencies. He had no past arrests or convictions and he had no history of mental health issues. A search of his room found several empty alcoholic beverage bottles. A backpack found in his truck contained two unopened bottles of beer along with school paperwork.

V.

LEGAL PRINCIPLES

A. Law of Homicide and Self-Defense

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide encompasses murder and manslaughter, which are unlawful, and acts of excusable and justifiable homicide, which are lawful. Homicide is justifiable when committed by any person “resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” (Pen. Code § 197(1).)

CALCRIM 505 sets forth the specific jury instructions on self-defense. It provides that a person is not guilty of murder or manslaughter if 1) that person “reasonably believed that [the person] [or] someone else . . . was in imminent danger of being killed or suffering great bodily injury”; 2) that person “reasonably believed that the immediate use of deadly force was necessary to defend against that danger”; and 3) that person “used no more force than was reasonably necessary to defend against that danger.” (*Judicial Council of California Criminal Jury Instructions (November 2019 Update), Calcrim 505.*)

CALCRIM 505 further provides that in deciding whether that person’s “beliefs were reasonable, consider all the circumstances as they were known to and appeared to [that person] and consider what a reasonable person in a similar situation with similar knowledge would have believed. If [that person]’s beliefs were reasonable, the danger does not need to have actually existed.” It also provides that “[a person] 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 has passed. This is so even if safety could have been achieved by retreating.” (*Ibid.*)

A killing by a peace officer is justifiable when it 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 arresting persons charged

with [a] felony, and who are fleeing from justice or resisting such arrest.” (Pen. Code § 196.)

Police officers have a duty “to maintain peace and security” and “to protect citizens from harm.” (*Batts v. Superior Court* (1972) 23 Cal.App.3d 435, 438.) A police officer may use deadly force when the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. (*Graham v. Conner* (1989) 490 U.S. 386, 396-397.) Reasonableness includes “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 in a particular situation.” (*Ibid.*)

Under the Fourth Amendment, police are “not required to use the least intrusive degree of force possible” but may use only such force as is objectively reasonable under the circumstances. (*Forrester v. City of San Diego* (9th Cir. 1994) 25 F.3d 804, 807.) An officer’s use of deadly force is reasonable only if “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) Furthermore, “if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” (*Plumhoff v. Rickard* (2014) 134 S.Ct. 2012, 2022.)

“The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene. It is also highly deferential to the police officer’s need to protect himself and others.” (*Martinez v. County of L.A.* (1996) 47 Cal.App.4th 334, 343 (quoting *Graham* 490 U.S. at 396-397).) The reasonableness test requires careful attention to the facts and circumstances of each particular case, including: (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 [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” (*Graham*, 490 U.S. at 396.)

B. Michael Johnson's Criminal Conduct

Johnson engaged in felony and misdemeanor criminal conduct immediately prior to the shooting. Had he survived he could have been charged with the commission of the following crimes:

- Assault with a deadly weapon in violation of Penal Code section 245(a)(1);
- Assault on a peace officer in violation of Penal Code section 245(c);
- Brandishing a deadly weapon in violation of Penal Code section 417(a)(1);
- Resisting an executive officer in violation of Penal Code section 69;
- Resisting, obstructing, or delaying a peace officer in violation of Penal Code section 148(a)(1); and
- Driving under the influence of alcohol in violation of Vehicle Code sections 23152(a) & (b).

VI.
ANALYSIS¹

In the period of time leading up to October 10, 2018, Michael Johnson began drinking heavily. Rather than go to his night class at Moorpark College on the evening of October 9, 2018, he went to the Crown and Anchor Pub. He arrived there shortly after 7:00 p.m. and did not leave until 1:10 a.m. on October 10, 2018, spending approximately six hours at the bar drinking shots of whiskey and beer. Although he was offered a ride home via Uber, he chose to drive himself. Approximately one-half mile from the bar, he crashed his truck by driving at an excessive speed and failing to negotiate a curve in the roadway on East Hillcrest Drive. Johnson's truck hit the south curb and a tree before careening across the street and running into a wooden fence along the open space area north of the roadway. Johnson's driving constituted a violation of Vehicle Code sections

¹ This legal analysis applies the laws in place as of October 10, 2018, the date of this shooting. Assembly Bill 392, Peace Officers: Deadly Force, which enacted Penal Code section 835a and modified Penal Code sections 196, was enacted on August 19, 2019 and became effective on January 1, 2020.

23152(a) and (b) as his blood alcohol content was determined to be .27 percent, which is more than three times the legal limit of .08 percent.

Several people living in the adjacent condominium complex heard the crash and called 911. Deputy Frates was the first to arrive. He assumed that he would find a solo vehicle accident and went to render aid. As he exited his patrol car, he saw Johnson standing near the driver's side of his truck. As he began to approach Johnson, he saw him raise both his hands to about shoulder level. He immediately noticed a knife in one of Johnson's hands as he began to cut his wrists and forearms with the knife. Deputy Frates called for back-up and pulled out his pistol after perceiving a threat by Johnson having a knife. He started issuing orders to Johnson to drop the knife. Johnson ignored Deputy Frates and continued to cut himself. This conduct is a violation of Penal Code 148(a), wherein Johnson was resisting and delaying the deputy in the discharge of his duty.

A few moments later both Sergeant King and Deputy Czyrkliis arrived. Sergeant King parked his vehicle in the middle of the roadway with his headlights pointing towards Johnson and his truck. Deputy Czyrkliis armed himself with his less-lethal shotgun and an AR-15 patrol rifle, which was not used in the incident. Sergeant King had his pistol pointed at the direction of Johnson and his truck. Sergeant King could not see Johnson clearly because he was on the other side of the truck. Sergeant King did not know whether Johnson had any other weapons and he feared Johnson could reach for a firearm from inside of the truck. Sergeant King wanted to move closer to get a better look at Johnson's movements and a better angle for Deputy Czyrkliis to fire the less-lethal shotgun at him to disarm him. Sergeant King and Deputy Czyrkliis walked across the street and stopped near the curb facing Johnson. They could see Johnson using a knife to cut his arms and they noticed the cuts were bleeding. Sergeant King yelled, "Drop the knife, don't do this." Johnson did not respond to the commands and did not say anything. Meanwhile, Deputy Frates also armed himself with his less-lethal shotgun.

Johnson ignored the deputies' demands to drop the knife and he stared at them blankly. Both Deputy Czyrkliis and Sergeant King described Johnson as having a "thousand-yard stare" and a look of determination on his face. He began to walk towards Deputy Czyrkliis and Sergeant King with the knife raised at shoulder height. By brandishing the knife at the deputies, Johnson committed a violation of Penal Code section 417(a), brandishing a deadly weapon in a threatening manner. Johnson was about 15 to 20 feet away from Deputy Czyrkliis and moving toward them when Deputy Czyrkliis heard Sergeant King say, "Hit him." Sergeant King actually said, "One round down." Deputy Czyrkliis understood Sergeant King was telling him to fire the less-lethal shotgun at Johnson. Based on Sergeant King's order and Deputy Czyrkliis' own perception of the threat Johnson posed, Deputy Czyrkliis fired less-lethal rounds at Johnson. Deputy Czyrkliis aimed for Johnson's lower extremities. Deputy Czyrkliis believed he had hit Johnson in the legs. After firing two less-lethal rounds, Deputy Czyrkliis saw the strikes had no effect on Johnson because he kept walking toward him. Deputy Czyrkliis fired two additional less-lethal rounds at Johnson's lower torso and extremities with no effect. Deputy Frates also shot Johnson one time with his less-lethal shotgun. Despite being hit with five less-lethal rounds (four from Deputy Czyrkliis and one from Frates), Johnson continued walking towards Deputy Czyrkliis and Sergeant King with his knife raised towards them. They moved backwards, but Johnson kept taking bigger strides and quicker steps toward them. Johnson was gaining distance on Deputy Czyrkliis and moving at a faster pace than he could move backwards. Deputy Czyrkliis believed Johnson was going to get close enough to stab one of them. Johnson's actions constituted an assault with a deadly weapon, a violation of Penal Code section 245(a)(1), and an assault with a deadly weapon on a peace officer, in violation of Penal Code section 245(c). Johnson's actions also constituted violations of Penal Code section 69, resisting an executive officer, and Penal Code section 148(a)(1), resisting, obstructing, or delaying a peace officer.

Deputy Czyrkliis estimated Johnson was less than 10 feet away from him when he heard Sergeant King shooting at Johnson. Deputy Czyrkliis was standing in the bike lane and Johnson was almost at the curb when Sergeant King began shooting him, as shown in the photograph on the top of page 32. The bike lane is eight feet wide and Johnson was close to the concrete curb so Deputy Czyrkliis' estimate of ten feet is fairly accurate. Both Firefighter Lundgren and Fire Captain Corsi estimated that Johnson was approximately 20 feet from the deputies when they started shooting. However, the firefighters were positioned 90-100 feet away, thus their estimates are less accurate than those of the deputies and the video from their body cameras. After hearing the shots, Deputy Czyrkliis saw Johnson still walking forward with the knife in his right hand. Deputy Czyrkliis dropped the less-lethal shotgun and removed his pistol from the holster. Deputy Czyrkliis pointed the pistol at Johnson's center mass and started shooting at him. Deputy Czyrkliis did not have time to aim, he was only trying to quickly fire rounds at Johnson's center mass to stop Johnson because he was moving quickly toward him. Deputy Czyrkliis shot Johnson because he believed Johnson was going to stab and kill either Sergeant King or himself. Deputy Czyrkliis estimated he shot four or five rounds from his pistol. He did not know how many rounds Sergeant King fired.

Sergeant King said that Johnson appeared to be fixated on Deputy Czyrkliis and himself and Johnson began walking toward them while staring at them. He saw that Johnson held the knife with a clenched right fist with the blade up near his head as he walked toward them. As Johnson got closer, Sergeant King told Deputy Czyrkliis to shoot him with less-lethal rounds. Sergeant King heard Deputy Czyrkliis shooting the less-lethal rounds, but they had no effect and Johnson continued walking toward them. Sergeant King knew that Deputy Czyrkliis was out of less-lethal rounds and he was Deputy Czyrkliis' lethal cover. Sergeant King tried to grab his taser with his right hand while holding his pistol in his left hand. Sergeant King believed he could possibly resolve this incident with a less-lethal force option. As Sergeant King grabbed for his taser, he saw Johnson increase his speed toward Deputy Czyrkliis. He realized that there was no time to use the taser. Sergeant King believed if he did not shoot Johnson, one of them would have been

stabbed. Sergeant King used the firearm in his left hand to shoot Johnson. Even though he shot Johnson, Johnson continued walking toward them. Sergeant King continued to shoot because the shots were not stopping him. Finally, Johnson collapsed onto the street and even after he fell, Johnson still possessed the knife in his right hand.

The entire incident unfolded in less than four minutes. Nineteen seconds passed from the moment Sergeant King and Deputy Czyrkliś moved to get a better vantage point to the moment the last shot was fired. This was a rapidly evolving event where Johnson moved quickly and continuously, without pausing, towards the deputies while they were moving backwards trying to create distance between themselves and Johnson. Johnson held the knife up in a threatening manner towards the deputies and ignored all demands to stop and to drop the knife. The deputies were in fear for their lives as Johnson aggressed towards them. They attempted to subdue Johnson and neutralize the threat he posed by using their less-lethal shotgun. Despite their best efforts to resolve the matter, Johnson made his intentions clear by continuing on his path towards them and then speeding up his movements in their direction. Deputy Czyrkliś and Sergeant King were in a vulnerable position in the street as Johnson came in their direction holding a deadly weapon. They only shot their pistols as a last resort to avoid serious bodily injury or death.

Given the proximity of Johnson to Deputy Czyrkliś and Sergeant King and the fact that he was approaching them with increasing speed, he could have easily stabbed Deputy Czyrkliś, Sergeant King or both of them, causing great bodily injury or death.

Under these circumstances, a reasonable officer would have concluded, as did both Sergeant King and Deputy Czyrkliś, that Johnson's actions posed a significant threat of death or serious physical injury to both of them. Johnson was armed with a deadly weapon and advanced on both Deputy Czyrkliś and Sergeant King, causing them to reasonably believe that the immediate use of deadly force was necessary to defend against the danger that Johnson's actions presented. Johnson's actions constituted felonious crimes of assault with a deadly weapon, a violation of Penal Code section

245(a)(1), and an assault with a deadly weapon on a peace officer, in violation of Penal Code section 245(c). Johnson's actions also constituted violations of Penal Code section 69, resisting an executive officer, and Penal Code section 148(a)(1), resisting, obstructing, or delaying a peace officer. Johnson was highly intoxicated with a blood alcohol level of .27 percent. He was also driving under the influence of alcohol in violation of Vehicle Code sections 23152(a) and (b), which was the likely cause of the collision.

According to witness Schottel, Johnson initially tried to move his truck and leave the area before law enforcement arrived however he was unable to do so because three of the truck's four tires were flattened. Next, witness Mejia saw Johnson attempt to walk away from his truck towards the hillside. Johnson stopped walking towards the hillside and returned to his truck once the first patrol vehicle arrived. When Deputy Frates arrived, Johnson began self-injuring and was non-compliant to his orders. Johnson had been interested in pursuing a career in law enforcement. He had some knowledge of police procedures due to his employment and the classes he was taking at Moorpark College. The day before the shooting, he had watched videos with a co-worker about less-lethal law enforcement responses to threats. He clearly knew the consequences of his actions and how the deputies would respond to a threat of deadly force against them.

An evaluation of the reasonableness of Sergeant King and Deputy Czyrkli's actions requires consideration of the limited amount of time they had to make a decision to use deadly force in a tense, violent situation. A review of the BWC video reveals that approximately 30 seconds passed while the deputies stood at the front of Sergeant King's vehicle trying to ascertain Johnson's movements and motive. Once Johnson started walking towards them, only 10 seconds elapsed from the time Deputy Czyrkli shot Johnson with the less-lethal shotgun to the time Sergeant King began shooting his pistol. During this very brief window of time, Johnson continued to advance towards the deputies, ignored their commands, and began closing the distance between himself and them. Johnson ultimately came within approximately 8 to 10 feet from the deputies with the knife raised in their direction when he was shot. As indicated above, the bicycle lane

is eight feet wide and the dirt shoulder is 10 feet wide. Johnson quickly covered the distance of the dirt shoulder and was close to the concrete curb when Deputy Czyrkliis ran out of less lethal projectiles. Czyrkliis was standing right on the white line of the bicycle lane when Sergeant King started shooting his pistol at Johnson who was stepping off of the curb.

Neither Deputy Czyrkliis nor Sergeant King were legally obligated to retreat from the assault by Johnson, but they did so as he advanced towards them. As stated in Cal Crim 505, “[a person] 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 has passed. This is so even if safety could have been achieved by retreating.” (*Judicial Council of California Criminal Jury Instructions (November 2019 Update), Calcrim 505.*)

Both Sergeant King and Deputy Czyrkliis reasonably perceived Johnson presented a threat to them. Indeed, Johnson showed no signs of slowing down or surrendering. Had the deputies not used deadly force, Johnson could have easily closed the distance between himself and the deputies in seconds while holding the knife in such a manner that he could have stabbed and possibly killed one or both of them. There is no indication that either peace officer fired any shots after Johnson went down on the ground. Rather, the evidence shows they immediately disarmed Johnson and called the paramedics who had staged just down the street.

Under these facts and the law governing self-defense, Sergeant King and Deputy Czyrkliis both reasonably defended themselves. Sergeant King and Deputy Czyrkliis justifiably responded to the threat of imminent danger of great bodily injury and death at the time they discharged their weapons at Johnson.

VII.
CONCLUSION

It is the conclusion of the District Attorney that:

- A. At the time Sergeant King and Deputy Czyrkliis fired their pistols at Michael Johnson, they both honestly and reasonably believed that they were in imminent danger of death or great bodily injury.
- B. At the time Sergeant King and Deputy Czyrkliis fired their pistols, they both honestly and reasonably believed that the immediate use of deadly force was necessary to defend themselves against the danger posed by Michael Johnson.
- C. Sergeant King used no more force than was reasonably necessary to defend against the apparent danger posed by Michael Johnson.
- D. Deputy Czyrkliis used no more force than was reasonably necessary to defend against the apparent danger posed by Michael Johnson.
- E. The fatal shooting of Michael Johnson by Sergeant King and Deputy Czyrkliis was a justifiable homicide.