



## **PUBLIC RELEASE MEMORANDUM**

**DATE:** August 27, 2020

**SUBJECT:** Officer Involved Shooting (Non-Fatal)

**Officers:** Deputy Jacob Tiel,  
San Bernardino County Sheriff's Department

Deputy Ricardo Rodriguez,  
San Bernardino County Sheriff's Department

Deputy Jonathan Holt,  
San Bernardino County Sheriff's Department

Deputy Elizabeth Gonzalez,  
San Bernardino County Sheriff's Department

**Involved Subject:** Roger James Tindell (Injured)  
Date of Birth 11/07/1981  
Morongo Valley, CA

**Date of Incident:** October 17, 2018

**Incident locations:** 11000 block of San Jacinto Street  
Morongo Valley, California

San Jacinto Street and Mojave Drive  
Morongo Valley, California

**DA STAR #:** 2019-63658

**Investigating Agency: San Bernardino County Sheriff's Department  
Homicide Division**

**Case Agent: Detective Nicholas Clark**

**DR #: 231802027  
601800145  
H#2018-100**

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### **PREAMBLE**

This was a non-fatal officer involved shooting by multiple deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department, Homicide Division. This factual summary is based on a thorough review of all the investigative reports, photographs, video recordings and audio recordings submitted by the San Bernardino County Sheriff's Department under DR# 231802027, DR# 601800145 and H#2018-100.

### **PRINCIPAL INVOLVED PARTIES**

**Deputy Jacob Tiel**, of the San Bernardino County Sheriff's Department, was involved in the shooting of Roger James Tindell.

**Deputy Ricardo Rodriguez**, of the San Bernardino County Sheriff's Department, was involved in the shooting of Roger James Tindell.

**Deputy Jonathan Holt**, of the San Bernardino County Sheriff's Department, was involved in the shooting of Roger James Tindell.

**Deputy Elizabeth Gonzalez**, of the San Bernardino County Sheriff's Department, was involved in the shooting of Roger James Tindell.

**Roger James Tindell**, DOB: 11/07/1981, of Morongo Valley, California was injured during the incident under review.

### **SCENE**

This incident occurred on October 17, 2018, at around 2:51 am, and involved two shooting locations. The first Officer Involved Shooting occurred on the 11000 block of San Jacinto

Road in Morongo Valley, California. The second Officer Involved Shooting occurred at the intersection of San Jacinto Street and Mojave Drive in Morongo Valley, California.

### **BACKGROUND INFORMATION**

**Roger James Tindell** has a prior criminal history that involves a 2009 conviction for violating Vehicle Code section 23152(a), Driving While Under the Influence of Alcohol, a misdemeanor, Orange County case number 08NM14840.

A warrant had been issued for his arrest on or about October 12, 2018, in connection with a double homicide in Henderson, Nevada.

### **RELATED CASE**

Criminal charges stemming from this incident were filed against Roger James Tindell in San Bernardino Superior Court case number FMB18000512. The case was resolved on December 11, 2019. Tindell entered a plea of guilty to one count of Penal Code §664/187, Attempted Willful, Deliberate, Premeditated Murder, two counts of Penal Code §664/187, Attempted Willful, Deliberate, Premeditated Murder of a Peace Officer and he admitted the enhancement for Discharging a Firearm Causing Great Bodily Injury or Death pursuant to Penal Code §12022.53(d).

Tindell was sentenced on December 20, 2019, to 32 years-to-life in state prison.

### **FACTUAL SUMMARY**

During a pre-shift briefing on October 17, 2018, San Bernardino County sheriffs deputies were informed that a subject named Roger Tindell was wanted out of Nevada for a double homicide and he was believed to be in the Yucca Valley area. They were also told he was possibly driving a Chevy Tahoe or Suburban and may be armed with a 9mm handgun.

On October 17, 2018, at around 2:14 in the morning, deputies from the San Bernardino County Sheriff's Department were dispatched to a report of a shooting in the 7000 block of Elk Trail in the town of Yucca Valley. Witness #1 called to report that Roger Tindell shot Victim #1. He added that Tindell and his pregnant girlfriend, Witness #2, fled the location in Victim #1's grey BMW. Deputies responded to the Elk Trail address and found Victim #1 with a gunshot wound to the head.

At approximately 2:51 a.m., Deputy Jacob Tiel located the suspect vehicle traveling westbound on Highway 62, roughly a half mile from the Elk Trail incident. Deputy Tiel intended to stop the suspect vehicle. Deputy Rodriguez arrived to assist. The driver, later identified as Roger Tindell, did not yield, however, and a pursuit ensued.

At one point during the pursuit, Tindell stopped the vehicle to the front of a residence in the 10000 San Jacinto Street. From the driver's seat, Tindell pointed a handgun through the passenger's window of the BMW and fired multiple rounds at the residence.<sup>1</sup> In response, Deputy Tiel, from the driver's seat of his patrol vehicle, fired his Mini 14 rifle at Tindell twice.<sup>2</sup> Tindell drove away and the pursuit continued. Deputies Holt and Gonzalez joined the pursuit at this point.

As the pursuit neared the Travelodge Inn located at 54850 29 Palm Highway, Deputy Tiel observed muzzle flashes and heard gunshots coming from Tindell's vehicle. Deputy Tiel believed Tindell was shooting out of the driver's side window and over his side at Deputy Tiel and Deputy Rodriguez.<sup>3</sup> No deputies were stuck by the bullets.<sup>4</sup>

After driving throughout Morongo Valley, Tindell returned to the area of San Jacinto Street and Mojave Drive. Sergeant Everhart was driving north on San Jacinto Street, towards the pursuit, when he observed Tindell driving southbound. Sergeant Everhart swerved to avoid a head-on collision. Tindell swerved towards Sergeant Everhart's vehicle and a broadside collision occurred. Tindell's vehicle came to rest after striking a fire hydrant, flooding the area. Tindell once again fired his handgun from his vehicle, out of the window.

Deputies ordered Tindell to show his hands. Deputy Tiel, Deputy Rodriguez, Deputy Holt and Deputy Gonzalez fired multiple rounds at Tindell when he did not comply. The fired rounds struck Tindell in the right arm and behind his left ear.<sup>5</sup>

The pursuit covered approximately 11 miles and lasted approximately 32 minutes.

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<sup>1</sup> It was later determined that Tindell believed the residence to be occupied by family members of Witness #2. A fired 9mm cartridge casing was later found at this location.

<sup>2</sup> Tiel's patrol vehicle had two bullet strikes in the windshield consistent with Tiel firing his weapon from inside of his patrol vehicle.

<sup>3</sup> Witness #2, in her interview with Detective Tebbets stated that Tindell pointed his handgun out of the open driver's window, towards pursuing deputies and fire the handgun.

<sup>4</sup> No fired cartridge casings were found at this location.

<sup>5</sup> Several fired cartridge casings were found at this location.

## INTERVIEWS

### Witness #2<sup>6</sup>

Witness #2 and Tindell dated on and off for about one year. Early in October 2018, an argument between the two led Tindell to strangle/choke Witness #2 by putting his hand to her throat. After the assault, Tindell fled to Henderson, Nevada, where he stayed with his cousin. Witness #2 remained in contact with Tindell through Facebook Messenger. Witness #2 knew Tindell to be an occasional user of methamphetamine and heroin, and a regular user of testosterone. Witness #2 described Tindell as a “monster” when under the influence of heroin.

Tindell informed Witness #2 that he had been on a psychiatric hold at an unknown hospital in Nevada, and that he was released on or about October 3, 2018. He also informed Witness #2 that he was staying with someone named Victim #2 and his pregnant wife.

On October 8, 2018, Witness #2 received a Facebook Messenger message from Tindell which stated, “I didn’t throw up this time, I’ll see you soon.” Witness #2 later associated this message with the murders that Tindell was accused of committing in Nevada. On October 13, 2018, Tindell contacted Witness #2 stating that he returned to Morongo Valley.

On Tuesday October 16, 2018, at 1:00 a.m., Witness #2 met Tindell at Victim #1’s trailer. Tindell disclosed to Witness #2 that he murdered Victim #2 and his wife by striking them in the head with a hammer. Tindell stole Victim #2’s money, guns, and Chevrolet Suburban. Tindell then drove the Suburban to California.

Witness #2 returned to the trailer at approximately 1:45am on October 17, 2018, and Victim #1 was talking to Witness #1 about a cocaine deal. Tindell was also present. During this conversation, Tindell pulled out a handgun and waived it at Victim #1 and Witness #1. Tindell then grabbed Witness #2’s backpack off the floor. He covered the gun with the backpack, put the backpack to Victim #1’s head, and pulled the trigger twice. Victim #1 fell to the floor.

Tindell then threatened Witness #1, forcing him to remove items from Victim #1’s pockets. Witness #1 offered to retrieve car keys to one of the vehicles in the yard so Witness #2 and Tindell could leave the location. Tindell agreed and released Witness #1.

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<sup>6</sup> On October 17, 2018, at approximately 7:35 in the morning, **Witness #2** was interviewed by Detective James Tebbetts.

Tindell and Witness #2 then exited the trailer and located a silver BMW. Tindell pointed the gun at Witness #2 and ordered her to get into the front passenger's seat. Witness #2 believed Tindell would shoot and kill her if she did not get in the vehicle.

Tindell drove the vehicle towards Highway 62. As Tindell drove, he reloaded the handgun with ammunition from his pant's pocket. Tindell approached Kikapoo Trail when he observed several patrol vehicles behind him with their lights and sirens activated. Tindell told Witness #2, "I am going down like a movie". Witness #2 wanted to get out of the BMW but Tindell stated, "It's too late, I have a gun to your head and there is nothing you can do about it."

Tindell refused to stop the BMW or allow Witness #2 to exit. As Tindell drove west on Highway 62, he slowed near Camino Del Cielo Trail. Witness #2 saw Tindell point his handgun out of the open driver's side window, towards the pursuing deputies, and shoot. Tindell fired several shots at the deputies. Tindell then pulled the handgun back inside the vehicle and continued to flee from deputies. Tindell slowed and accelerated multiple times during the pursuit. Tindell also used his cellular phone to record the deputies behind him.

Tindell then drove to the area of Witness #2's family residence in the 11000 block of San Jacinto Road. Tindell stopped the BMW in front of the residence, held the handgun with his right hand and reached across Witness #2. Through the open driver's side window, Tindell yelled, "She's pregnant and I will shoot her." Tindell pointed the handgun at Witness #2's family residence and fired multiple times. Tindell then drove away. Tindell reloaded the handgun, again, with additional ammunition from his pant's pocket.

After approximately 15-20 minutes, the pursuit returned to San Jacinto Street and Mojave Drive. Witness #2 saw several patrol vehicles approaching Tindell's vehicle. Tindell swerved into the oncoming patrol vehicles colliding with one of them. Tindell lost control of the BMW and came to rest after hitting a fire hydrant. Tindell held the handgun out of the driver's window and fired several shots at the deputies. Tindell pulled the handgun back inside the driver's compartment of the vehicle and deputies fired at Tindell. Tindell was struck several times with gunfire and ducked down in the driver's seat of the BMW. Tindell threw the handgun and magazine out of the driver's side window.

Deputies approached the rear of the BMW and ordered Witness #2 to exit the vehicle.

### **Witness #1**<sup>7</sup>

On October 14, 2018, Witness #1 met with Roger Tindell at the Super One convenience store located on Twenty-Nine Palms Highway. Tindell needed a place to stay so

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<sup>7</sup> On October 17, 2018 at approximately 7:45 in the morning, **Witness #1** was interviewed by Detective James Williams.

Witness #1 offered to let Tindell stay with him in his trailer. The following day, Tindell told Witness #1 that he “fucked some people up” in Las Vegas, Nevada.

On October 16, 2018, Witness #1 found Witness #2 with Tindell inside of the trailer.

On October 17, 2018 at 1:45 in the morning, Witness #1 found Victim #1 and Tindell inside the trailer consuming beer and whiskey. Witness #2 was also in the trailer. At one point, Tindell raised his voice and pulled out a handgun. Tindell pointed the gun at Victim #1, who was sitting in a chair. Tindell and Victim #1 struggled over the gun and the gun discharged. Tindell then walked up to Victim #1, pointed the gun at his forehead and shot him. Tindell then forced Witness #1 to retrieve items from Victim #1’s pockets. Witness #1 offered to provide Tindell with keys to Victim #1’s car. Tindell agreed and allowed Witness #1 to leave the residence. Witness #1 ran to his sister’s house and called 911.

### **DEPUTY JACOB TIEL<sup>8</sup>**

Tiel attended a pre-shift briefing on October 17, 2018. During that briefing, Tiel learned that Tindell was wanted out of Nevada for a homicide and was believed to be in the Yucca Valley area. He was informed that Tindell was possibly driving a Tahoe or Suburban and may be armed with a 9mm handgun.

While on patrol, Deputy Tiel drove a marked Sheriff’s Department vehicle and wore a Sheriff’s Department uniform.<sup>9</sup> He carried a Glock 21, .45 caliber handgun. The patrol vehicle was equipped with a Mini 14 rifle between the front seats.

While on patrol, Tiel received information about a shooting in Yucca Valley in which the victim was believed to have been shot in the head with a 9mm handgun. Deputy Tiel believed the shooting was related to Tindell based upon the information he received during the briefing. Deputy Tiel heard over the radio that the suspect of the shooting was driving a dark gray BMW with paper/dealer plates.

While driving through Yucca Valley, Deputy Tiel saw what he believed to be distinct BMW lights in the parking lot of 7-11. Deputy Tiel stated his heart dropped. He felt scared because the occupants of the vehicle, if associated with the shooting, may be armed. Deputy Tiel waited for more units to arrive before attempting a traffic stop on the vehicle. Deputy Ricardo Rodriguez arrived in a separate patrol vehicle to assist. The driver, later determined to be Tindell, failed to yield and a pursuit ensued.

During the pursuit, Tindell would occasionally stop the vehicle, then accelerate quickly. Deputy Tiel saw Tindell stick his hand out of the driver’s side window, holding what appeared to be a cell phone. At one point during the pursuit, Tindell pulled up to a house and stopped. Deputy Tiel saw a passenger in the vehicle. Deputy Tiel then saw

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<sup>8</sup> On October 19, 2018 at 4:02 p.m., **Deputy Jacob Tiel** was interviewed by Detective Nicholas Clark.

<sup>9</sup> Deputy Tiel wore a Class A uniform with pants, short sleeve t-shirt with patches and a Sam Brown belt.

Tindell point a handgun at the passenger and pull the trigger, firing 4-6 rounds. Deputy Tiel believed Tindell shot the passenger. In response, Deputy Tiel aimed the Mini 14 rifle at Tindell and fired twice through the windshield of his patrol car as he sat in the driver's seat.<sup>10</sup> Tindell drove off again.

During the pursuit, Tindell drove on a dirt road, creating a dust cloud that limited Deputy Tiel's vision. Deputy Tiel feared that Tindell could be stopped on the other side of the dust cloud ready to fire at him.

When the pursuit approached San Jacinto Street and Mohave Drive, Deputy Tiel saw muzzle flashes and heard gunshots coming from Tindell's vehicle. Tiel believed that Tindell was shooting at him. As the pursuit continued, Deputy Tiel saw Sergeant Everhart's vehicle approaching from the opposite direction. Deputy Tiel saw Sergeant Everhart turn his vehicle to avoid hitting Tindell, but Tindell turned his vehicle into Sergeant Everhart. The two vehicles collided. Tindell's vehicle went up and over an embankment, hitting a fire hydrant.

Deputy Tiel held his duty weapon and approached the front of Sergeant Everhart's vehicle to use as cover. Deputy Rodriguez was also standing there, firing his weapon at Tindell. Deputy Tiel heard other gunshots and knew Deputy Rodriguez was not the only one shooting. Deputy Tiel then fired 17 rounds from his duty weapon at Tindell while other deputies ordered Tindell to put his hands up. Deputy Tiel saw the passenger, later identified as Witness #2, put her hands up and exit the vehicle through the passenger side window.

After the shooting stopped, Deputy Tiel and Deputy Rodriguez approached the driver's side of the vehicle and handcuffed Tindell as he sat in the driver's seat. Tindell suffered wounds to his arms and behind his ear. Tindell told Deputy Tiel that his firearm was on his lap.

### **DEPUTY RICARDO RODRIGUEZ**<sup>11</sup>

Deputy Rodriguez attended a pre-shift briefing on October 17, 2018. During that briefing Rodriguez learned that an FBI task force was searching for Roger Tindell, a suspect in a double homicide out of Las Vegas. Tindell's cellphone "pinged" in the Yucca Valley area.<sup>12</sup> Deputy Rodriguez was shown a photograph of Tindell and informed that he may be armed with a 9mm handgun.

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<sup>10</sup> A San Bernardino County Sheriff's Department vehicle was located with two side by side entry/exit holes in the windshield.

<sup>11</sup> On October 19, 2018 at 2:59 p.m., **Deputy Ricardo Rodriguez** was interviewed by Detective James Tebbetts

<sup>12</sup> Cell phone "ping": the process of determining the location, with reasonable accuracy, of a cell phone at any given point in time by utilizing the phones GPS location aware capabilities.



Deputy Rodriguez was assigned to patrol driving a marked Sheriff's Department vehicle and wore a Sheriff's Department uniform.<sup>13</sup> Deputy Rodriguez was armed with his Glock 21 handgun. Deputy Rodriguez loaded the weapon with 13 rounds, 12 in the magazine and one in the chamber. During the incident, Deputy Rodriguez fired roughly fifteen rounds.

At approximately 2 a.m., he heard a radio broadcast that a subject had been shot in the head in the area in which Tindell's phone was last pinged. Deputy Rodriguez believed that if this was Tindell, he would be armed and dangerous. While in route to the shooting location, Deputy Rodriguez received a description of the suspect vehicle: a 2016 charcoal grey BMW.

Deputy Rodriguez and Deputy Tiel checked a nearby parking facility and located a BMW matching the description. The BMW turned westbound on Highway 62, and deputies initiated a traffic stop. The driver failed to yield and a pursuit ensued.

At one point, the driver stopped the BMW on Mojave Drive and stuck a phone out of the window. Deputy Rodriguez stopped his vehicle, too. With the patrol vehicle door slightly ajar, Deputy Rodriguez was able to see into the vehicle and identified the driver as Roger Tindell. Deputy Rodriguez also saw a passenger in the vehicle. He knew Tindell was suspected to be armed and dangerous. Deputy Rodriguez ordered Tindell, several times, to shut off the vehicle, but Tindell did not comply. At that point, Deputy Rodriguez heard 4-5 gunshots and saw the muzzle flash inside of Tindell's vehicle. Deputy Rodriguez was able to tell that the 4-5 shots came from inside of Tindell's vehicle but was not able to tell the direction Tindell was shooting. Deputy Rodriguez then heard two gunshots and saw dust coming from Deputy Tiel's windshield. Deputy Rodriguez was afraid, not only for himself, but for Deputy Tiel's safety as well.

Tindell then continued the pursuit and drove throughout the city of Morongo Valley. Tindell drove on dirt trails, opposite lanes of traffic, and changed speeds frequently. Tindell slowed the BMW on occasion. When he did so, Deputy Rodriguez feared that Tindell was going to shoot at deputies. Tindell then stopped his vehicle. Deputy Rodriguez heard Deputy Tiel broadcast shots fired. Deputy Rodriguez did not know who fired or in what direction because his view was obstructed by a dust cloud. Deputy Rodriguez was fearful because he did not know if Tindell shot his partner or someone else.

Tindell again continued the pursuit and drove towards San Jacinto Street and Mojave Drive. Tindell's vehicle then crashed into a Sheriff's Department vehicle, specifically Sergeant Everhart's vehicle. Tindell's vehicle came to rest on the northwest end of the intersection. Deputy Rodriguez then jumped out of his patrol vehicle and ran to the front end of Sergeant Everhart's vehicle to use it as cover from the gunfire. Deputy Rodriguez pointed his weapon at Tindell, who was still seated in the driver's seat of his vehicle. Deputy Rodriguez ordered Tindell to put his hands up and to let deputies see his hands. Deputy Rodriguez stated this command 7 times. Multiple deputies were also giving

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<sup>13</sup>The uniform consisted of patches, name, badge, star, boots, and a duty belt.

commands for Tindell to put his hands up. Tindell put his hands out of the window, then pulled them back into the vehicle. Deputy Rodriguez then heard gun shots. He couldn't see where they were coming from, however. He believed Tindell may have shot at deputies or the passenger. Deputy Rodriguez began to shoot and did not stop until he ran out of bullets. He then reloaded. Tindell still refused to follow the command to show his hands, he would show them and then pull them back into the vehicle. It appeared that he was reaching for something when he did so. Deputy Rodriguez then saw Tindell's head dip below the headrest and out of view. Deputy Rodriguez thought Tindell was reaching for a gun or another weapon. Deputy Rodriguez continued to shoot until Tindell showed his hands. Tindell eventually stopped moving. Deputies approached the vehicle and had the passenger exit. Deputies took Tindell into custody.

### **DEPUTY JONATHAN HOLT<sup>14</sup>**

Deputy Holt attended a pre-shift briefing on October 17, 2018. During the briefing, Deputy Holt received an information packet about a wanted suspect named Roger Tindell. The packet contained a photograph of Tindell as well as information that Tindell was wanted for two homicides out of Nevada. In addition, there was information that his phone was "pinging" in the Joshua Tree/Yucca Valley area and he may be in possession of a stolen 9-millimeter firearm.

During his shift, Deputy Holt drove a marked Sheriff's Department patrol vehicle and wore a Sheriff's Department uniform. Deputy Holt was armed with a Glock 21, .45 caliber firearm. Deputy Holt fired his weapon 20 to 25 times during this incident.

Deputy Holt heard the initial call regarding a potential gunshot victim in the Yucca Valley area and decided to respond. While in route, Deputy Holt received information that the victim sustained a gunshot wound to the head. Once on scene, Deputy Holt was directed to conduct an area check for the suspect vehicle, a gray BMW. Deputy Holt heard a radio broadcast that the suspect likely possessed a gun.

While patrolling the area, Deputy Holt saw Deputies Tiel and Rodriguez pursuing a gray BMW. Deputy Holt joined the pursuit with lights and sirens activated. The pursuit continued throughout Morongo Valley, including dirt roads. Deputy Holt could tell that the driver, later identified as Roger Tindell, knew the area based on how he was driving. Deputy Holt feared that Tindell was going to try and shoot him or his partners based upon the circumstances of the pursuit, Tindell's erratic driving, and that he was possibly armed with a firearm. At one point, the pursuit came to a stop and Deputy Holt jumped out of his vehicle. He heard 4 shots but was unable to see where they came from. Deputy Holt then saw Deputy Tiel fire two rounds from inside his vehicle. Deputy Holt feared for his safety and the safety of the other deputies.

The pursuit continued and Tindell's vehicle travelled on a dirt road, causing a dust cloud. Deputy Holt, who was following Sergeant Everhart's vehicle, briefly lost sight of

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<sup>14</sup> On October 19, 2018, at 1:00 p.m., **Deputy Jonathan Holt** was interviewed by Detective Gerad Laing.

the BMW. When he regained visual contact, Tindell's vehicle traveled towards Deputy Holt and Sergeant Everhart. Deputy Holt feared for his safety, thinking that Tindell now had a direct ability to shoot him in the head. A traffic collision occurred between Tindell's vehicle and Sergeant Everhart's vehicle, which caused Tindell's vehicle to become immobilized. Deputy Holt immediately jumped out of his vehicle but had no cover. Deputy Holt saw Tindell moving around within his vehicle and believed he saw Tindell with a gun. Deputy Holt fired his gun at Tindell's vehicle. He then ordered Tindell, 7 times, to show his hands. Deputy Holt broadcast over the radio that Tindell had a gun. Deputy Holt fired 6 or 7 rounds before his gun jammed. He continued to hear gunfire and believed he was being shot at as he stood in the open. Deputy Holt reloaded and continued to shoot at Tindell. Deputy Holt's gun either jammed or ran out of bullets, so he reloaded again. He then resumed firing. Tindell was still moving and would not comply with the deputies' commands. Deputy Holt then saw Tindell's body slump with his hands out of the window. He felt that if he saw Tindell's hands move back inside the vehicle again, Deputy Holt was going to shoot. Tindell complied with commands at that point.

Deputy Holt helped the passenger to exit the vehicle and placed handcuffs on her. Deputy Holt then assisted other deputies in holding Tindell at gunpoint until he could be detained safely. Deputy Holt found a firearm on the driver's side floorboard. Several rounds of live ammunition, as well as spent casings, were located in the suspect vehicle.

### **SERGEANT STEVE EVERHART<sup>15</sup>**

Prior to the start of his shift on October 17, 2018, Sergeant Everhart received information that an FBI task force was searching for a subject named Roger Tindell in connection with a double homicide out of Henderson, Nevada. Tindell's phone recently "pinged" in Yucca Valley. Other information provided by the FBI included Tindell's booking photo and his date of birth. Tindell was considered to be a high-risk safety concern.

Sgt. Everhart drove a marked patrol vehicle and wore a San Bernardino County Sheriff's Department uniform. Sgt. Everhart was armed with a department issued Glock 21 handgun, two .45 Glock magazines with 12 rounds in each, a can of oleoresin capsicum, and an X2 Taser.

Sergeant Everhart, during his shift, heard a call over the radio of a subject down at a location where Tindell's phone had been "pinged." Sergeant Everhart felt this could be related to Tindell. Sergeant Everhart drove to that location and observed the victim with a gunshot wound to the head. Sergeant Everhart heard a radio broadcast that Deputy Tiel located the suspect vehicle, a grey BMW.

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<sup>15</sup> On October 17, 2018 at 11:16 a.m., **Sergeant Steve Everhart** was interviewed by Detective James Williams.

Sergeant Everhart then decided to join the pursuit that Deputy Tiel was involved in. Once Sergeant Everhart got to the top of Yucca Grade, he saw police lights in the distance. Sergeant Everhart sped up and got within less than a mile of the pursuit. Sergeant Everhart considered the option to conduct pit maneuvers but felt that it was too dangerous as Tindell was believed to have just shot another individual in the head.

At one point during the pursuit, Tindell stopped his vehicle. At that point, Sergeant Everhart heard two gunshots. Sergeant Everhart believed the two shots were from a rifle as they were louder than a handgun.<sup>16</sup>

The pursuit continued and Sergeant Everhart lost visual of the pursuit when Tindell drove on a dirt road causing a dust cloud. Sergeant Everhart eventually regained visual of the lights from the pursuing patrol vehicles and was able to get ahead of the pursuit. When Sergeant Everhart got back onto the roadway, he immediately saw Tindell's vehicle coming right at him. Sergeant Everhart turned left to avoid getting hit. Tindell turned right and the two vehicles collided. Sergeant Everhart put his vehicle in park and immediately heard gunfire.

Sergeant Everhart exited his vehicle and took cover to the back-driver's side door. Sergeant Everhart could not see Tindell's hands at this point but continued to hear gunfire. Tindell failed to comply with commands by multiple deputies for Tindell to show his hands. At one point, Sergeant Everhart saw Tindell with his arms hanging outside of the vehicle. He then ordered everyone to stop firing.

### **DEPUTY ELIZABETH GONZALEZ<sup>17</sup>**

During a pre-shift briefing, Deputy Gonzalez was informed that Roger Tindell was wanted for a double homicide out of Las Vegas, and that he may be armed and dangerous.

On October 17, 2018, Deputy Gonzalez drove a marked patrol vehicle and wore a Sheriff's Department uniform. Deputy Gonzalez was armed with a Glock 17, 9 mm. firearm. She had 17 rounds, 16 in the magazine and 1 round in the chamber.

Deputy Gonzalez received a call for service at 2:18 a.m., regarding a gunshot victim. Deputy Gonzalez responded to the reporting party's location and spoke to Witness #1. Witness #1 stated he saw the suspect, Roger Tindell, shoot the victim in the shoulder, then again in the head. Witness #1 stated that Tindell had a 9mm firearm, was ready to kill law enforcement, and was wanted out of Las Vegas. Deputy Gonzalez heard over the radio that Tindell may be driving a grey BMW, that deputies were attempting to stop

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<sup>16</sup> Deputy Tiel would later tell Sgt. Everhart that he fired two rounds from his Mini 14 rifle through his windshield.

<sup>17</sup> On October 19, 2018 at 1:46 p.m., **Deputy Elizabeth Gonzalez** was interviewed by Detective Nicholas Clark and Detective James Williams.

a grey BMW and that the vehicle failed to yield resulting in a pursuit. Deputy Gonzalez finished speaking to Witness #1, then left to join the pursuit.

Deputy Gonzalez joined the pursuit as it was heading down the Morongo grade, passing Camino Del Cielo. At one point, Tindell slowed, almost to a stop, when Deputy Gonzalez heard shots being fired from Tindell's vehicle. This was at the location of San Jacinto and Mohave. Tindell then drove off and the pursuit continued. Tindell's vehicle collided with Sergeant Everhart's vehicle and both vehicles came to a stop.

As soon as Deputy Gonzalez exited her vehicle, she heard shots being fired from Tindell's vehicle. Deputy Gonzalez believed the suspect was trying to shoot at deputies. She feared for her safety and the safety of the other deputies. Deputy Gonzalez could not see Tindell's hands but saw that Tindell was moving around within the vehicle. Deputy Gonzalez heard her partners giving Tindell verbal commands to show his hands, but he did not comply. Deputy Gonzalez did not give any commands. She exited her vehicle, immediately heard gunfire, and took cover behind Deputy Holt. Deputy Gonzalez fired her weapon until Tindell complied with commands to put his hands out of the car's window. Deputy Gonzalez fired 17 rounds from her handgun.

#### **DEPUTY JEFFREY DIECKHOFF<sup>18</sup>**

Deputy Dieckhoff wore a San Bernardino County Sheriff's Department issued uniform and drove a marked patrol vehicle.

During his shift on October 17, 2018, Deputy Dieckhoff attended a briefing in which Roger Tindell was discussed. Deputy Dieckhoff learned that Tindell's phone "pinged" in the area of Elk Trail in Yucca Valley.

During his shift, Deputy Dieckhoff received information about a gunshot victim on Elk Trail. Deputy Dieckhoff decided to contact law enforcement in Nevada to determine if they had updated information about Tindell's cell phone "pinging" in the area. According to law enforcement in Nevada, the cellphone "pinged" at the same location as their gunshot victim in Yucca Valley.

Deputy Dieckhoff decided to join the search for Roger Tindell. He saw deputies attempt a traffic stop on a suspect vehicle, westbound on Inca Trail near Kickapoo Trail. Dieckhoff then joined the pursuit. Deputy Dieckhoff felt the shooting and the pursuit were linked to Roger Tindell.

At one point during the pursuit, Deputy Dieckhoff observed the driver, later identified as Roger Tindell, pull over. He then heard gunshots. Tindell accelerated and the pursuit continued. Deputy Dieckhoff saw Tindell hold his cellphone out of the car as if he were recording the pursuit. Deputy Dieckhoff lost sight of the pursuit several times as Tindell drove on dirt roads creating clouds of dust. As Deputy Dieckhoff rejoined the pursuit,

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<sup>18</sup> On October 17, 2018 at 12:53 p.m., **Deputy Jeffrey Dieckhoff** was interviewed by Detective James Tebbetts.

he heard multiple gunshots. The pursuit ended when Deputy Dieckhoff saw Tindell's vehicle off to the side of the road and a fire hydrant flooding the area. Deputy Dieckhoff used a spotlight to illuminate Tindell. Deputies gave Tindell commands to get out of the vehicle and to show deputies his hands. Deputies approached the vehicle and removed the female passenger from the car. Dieckhoff then approached Tindell in the driver's seat.

## **ROGER TINDELL**

On October 23, 2018, Detective James Williams and Detective Gerad Laing contacted Roger Tindell at Desert Regional Medical Center in Palm Springs, California, where he was hospitalized. Tindell was read his *Miranda* rights, to which Tindell answered "Yes" to each question. Tindell agreed to waive his rights and speak to detectives regarding the incident that took place on October 17, 2018.

Tindell stated that he wanted to return to California from Nevada so that he could reunite with Witness #2. Witness #2 was pregnant with Tindell's child. Tindell then fled Nevada and arrived in Morongo Basin on Monday October 15, 2018. While at a liquor store in Yucca Valley, Tindell met Witness #1. Witness #1 allowed Tindell to stay at his trailer. Tindell described using methamphetamine, didn't know how to act because he was on the run from Nevada, and did not want to get caught. Witness #2 eventually joined Tindell at the trailer.

On Wednesday, October 17, 2018, Tindell was inside of the trailer with Witness #2 and Victim #1. Victim #1 melted cocaine and smoked it through a marijuana pipe. Victim #1 offered some of the narcotics to Tindell, who refused. Victim #1 became upset and called Tindell several names, such as "pussy". Tindell has a Glock 21 that he took from Nevada. The gun was originally pink, but Tindell painted it black and attached a silencer to the barrel.

Tindell described the shooting of Victim #1 as an accident, stating that there was a struggle over the firearm. Tindell then stated that he forced Witness #2 into the BMW, put his bags in the back seat, and drove away. Tindell saw two deputies approach the house as he drove away and wondered why the deputies did not stop him at that moment. Tindell stated that if the deputies had stopped him at that moment, he would have shot at them.

While driving the BMW through Yucca Valley, he stated that it was time "to face the music and because [he] wasn't going to be able to live with himself after all this anyway." Tindell then saw a patrol unit behind him activate its lights and sirens. Tindell drove to the area of San Jacinto Street where he believed Witness #2's ex-boyfriend lived. Tindell was upset with how Witness #2's ex-boyfriend treated her, so he fired two rounds at the residence. He was surprised when deputies shot at him. Tindell then drove off. While driving, he made Facebook videos because he was "fucked" and

wanted to make a good story so Witness #2 could sell it and provide for his unborn child. Tindell told Witness #2 he was going to die and there was no way out of it.

When Tindell approached the Travel Lodge Inn, he fired two shots hoping to create distance between himself and the deputies. The units did not back off and continued to pursue Tindell.

As the pursuit approached San Jacinto Street, he saw a patrol vehicle drive towards him. The vehicles collided and Tindell's vehicle hit a fire hydrant. Tindell claimed he did not fire any additional rounds from his firearm, but that a barrage of gunfire was received from the deputies. Tindell stated he initially showed his hands, but then was shot in the head and could not hear any further commands given by the deputies. Tindell stated that he put his hands out of the window and acted like he was unconscious so that the deputies would stop firing. Tindell did not remember any additional facts after being taken into custody.

### **Belt Recordings<sup>19</sup>**

#### **DEPUTY JACOB TIEL**

Deputy Tiel was equipped with a department issued belt recorder on the date of this incident. It appeared the recording was initiated during the pursuit as the recording captured the sounds of sirens and radio traffic.

At 31:58 minutes, Deputy Tiel stated the suspect, Tindell, was firing out of the window. It appeared that shots were being fired for approximately 10 seconds. At 32:12 minutes, radio traffic stated there was a traffic collision. Immediately after the traffic collision occurred, shots were fired. The shots appeared to be rapid and appeared to be coming from multiple sources. Shots were fired through 32:50 minutes. During that time, multiple commands, by multiple deputies, were given to Tindell to show deputies his hands.

At 34:15, deputies approached the passenger, Witness #2, and gave her commands to exit the vehicle. At 38:15, deputies contacted Tindell and requested medical aid. Tindell stated, "I only have one handgun," and "I will not touch it." Tindell added that the firearm was "in his lap," but that he didn't know where it went. Tindell stated it was a Barretta 9mm. Tindell was heard moaning and complaining of pain to his wrist. Tindell then stated that he "took her hostage," (referencing his passenger, Witness #2). Tindell stated that his phone was on Facebook Live Feed, and that he recorded the pursuit.

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<sup>19</sup> The belt recordings were reviewed in their entirety. What follows are summaries of the relevant information.

## **DEPUTY JONATHAN HOLT**

Deputy Holt was equipped with a department issued belt recorder on the date of the incident under review. His belt recorder was activated at the time he began to search for the suspect vehicle. Sirens from other patrol vehicles could be heard as the pursuit started. During the pursuit, on the 11000 block of San Jacinto Street, Deputy Holt's belt recording captured five rapid gunshots, followed by two deeper ones.<sup>20</sup>

The pursuit continued and radio traffic advised that there was a second shooting from the suspect vehicle.

The pursuit continued for several minutes, back to San Jacinto Street and Mohave Drive. The belt recording then captured gunfire, commands for Tindell to show his hands, and further rapid gunfire. Commands were made by several deputies for Tindell to show his hands. Tindell was heard moaning and speaking in a soft tone. Tindell's statements could not be deciphered from Deputy Holt's belt recording, however.

At the conclusion of the belt recording, Deputy Holt recovered the firearm from Tindell's vehicle, stating that it was on the floorboard. Deputy Holt was told to leave the firearm in the vehicle.<sup>21</sup>

## **DEPUTY RICARDO RODRIGUEZ**

Deputy Rodriguez was equipped with a department issued belt recorder on the date of this incident. The recording was initiated at the time of the attempted traffic stop on Tindell. Deputy Rodriguez relayed the locations, speeds, and traffic conditions of the pursuit.

At 9:00 minutes into the recording, Deputy Rodriguez stated that Tindell had his arm out of the window and appeared to be recording on a cell phone. At 11:37 minutes, near the location of San Jacinto Street and Mojave Drive, Deputy Rodriguez gave Tindell commands to shut off his vehicle. At 12:29 minutes, shots were fired from Tindell's vehicle. At 18:11, radio traffic stated that Tindell was firing out of the window. At 18:23 minutes, Deputy Rodriguez saw that a traffic collision occurred. Deputy Rodriguez was heard giving commands for Tindell to show his hands. Immediately thereafter, gunshots were heard. After the gunfire stopped, Deputy Rodriguez gave commands to the passenger, Witness #2. Deputy Rodriguez told Witness #2, get your hands up, put your hands up, exit the passenger door, and let us see your hands. When Witness #2 could not open the door, further commands were given by Deputy Rodriguez to Witness #2 to exit the window and do not reach for anything. At 24:30 minutes, Deputy Rodriguez approached Tindell who was still located inside of the suspect vehicle.

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<sup>20</sup> This was Tiel's use of the Mini 14 rifle.

<sup>21</sup> The firearm was located on the floorboard of the driver's seat where Tindell was seated.



Tindell was heard stating, "I only have one handgun, it is on my lap somewhere, I will not touch it." Tindell was heard moaning and complaining of pain to his wrist. Tindell confirmed his firearm was a Barretta 9mm handgun.

### **DEPUTY ELIZABETH GONZALEZ**

Deputy Gonzalez was equipped with a department issued belt recorder on the date of the incident under review. Deputy Gonzalez's belt recordings did not capture the Officer Involved Shooting. Rather, it captured Deputy Gonzalez's interview with Witness #1 and the activity following the Officer Involved Shooting.

### **Facebook Live Stream Video**

Roger Tindell used his cell phone to record a portion of the pursuit via Facebook Live Stream. The video was 6 minutes and 58 seconds long. Tindell was heard stating "I will kill a snitch." He recorded the video to let his fans have access to the pursuit. Tindell stated that Witness #2 was in the wrong place at the wrong time and that he took her hostage. Tindell stated that he would be trying to get away from police. Tindell acknowledged "popping" someone in the face.

Witness #2 was heard telling Tindell to drive. At 4 minutes and 43 seconds into the video, deputies were heard telling Tindell to shut the vehicle off. In response, Tindell stated "fuck you, I'll shoot this fucking bitch." Tindell added, "this fucking bitch is pregnant, I'll fucking shoot her, you better back off."

At 5 minutes and 29 seconds, Tindell could be seen and heard shooting his handgun. Tindell was then heard demanding Witness #2 to give him bullets to reload his handgun. Witness #2 was heard crying. Tindell told Witness #2 that the officers did not shoot at his car but shot towards them to make them run. The video went black. Tindell was then heard telling Witness #2 that he needed to let her out and do this alone. Tindell repeatedly said that he loved Witness #2. The video ended with Tindell and Witness #2 having a conversation that could not be understood.

### **Tindell's Weapon**

A brown 9mm, Beretta semi-automatic pistol, with no serial number was located on the passenger front seat.<sup>22</sup>

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<sup>22</sup> Per Deputy Holt, he located the firearm on the floorboard of the driver's seat of the gray BMW. Deputy Holt picked up the firearm and placed it on the passenger seat of the vehicle.

## **De-escalation**

Deputies made several attempts to de-escalate the situation by giving Tindell roughly eleven verbal commands to show his hands, to put his hands up, and to exit his vehicle. Tindell continued to fire his weapon, reach for items while in the driver's seat, and failed to comply. In response to Tindell shooting, deputies fired at Tindell until he complied with commands to show his hands.

## **Injuries**

Roger Tindell was transported to Hi-Desert Medical Center in the city of Joshua Tree, for treatment. He was subsequently transported to Desert Regional Medical Center in Palm Springs for advanced care. Tindell sustained the following injuries: a gunshot wound to his right hand and a gunshot wound behind his left ear.

## **APPLICABLE LEGAL STANDARDS**

### **Laws of Arrest**

#### **California Penal Code section 834a**

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

#### **California Penal Code section 835**

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

#### **California Penal Code section 835a**

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect 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.

### **Assault With A Firearm**

Like other types of assault, the crime of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(2) requires only “the general intent to willfully commit an act the direct, natural and probable consequences of which if successfully completed would be the injury of another.” (*People v. Rocha* (1971) 3 Cal.3d 893, 899; similarly, see *People v. Colantuono* (1994) 7 Cal.4th 206, 214.)

[W]e hold that assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.

(*People v. Williams* (2001) 26 Cal.4th 779, 790; see also *People v. Golde* (2008) 163 Cal.App.4th 101, 108.) “This defines the mental state as a species of negligent conduct, a negligent assault. Where the negligent conduct involves the use of a deadly weapon ... the offense is assault with a deadly weapon.” (*People v. Wright* (2002) 100 Cal.App.4th 703, 706.)

As to the “firearm” theory of Penal Code section 245(a)(2), a firearm is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion. (Cal. Pen. Code. §16520.)

Assault with a deadly weapon does not require that the defendant actually try to use the weapon on the victim’s person. The test is whether the defendant demonstrates the “present ability” to complete the attack. The present ability element is satisfied when a defendant has attained the means and location to strike immediately, which means that the defendant must have the ability to inflict injury on the present occasion although the defendant need not have the ability to inflict injury instantaneously. (*People v. Chance* (2008) 44 Cal.4th 1164.) “Numerous California cases establish that an assault may be committed even if the defendant is several steps away from actually inflicting injury, or if the victim is in a protected position so that injury would not be “immediate,” in the strictest sense of that term.” (*Id.* at p. 1168.)

As this court explained more than a century ago, “Holding up a fist in a menacing manner, drawing a sword, or bayonet, presenting a gun at a person who is within its range, have been held to constitute an assault. So, any other similar act, accompanied by such circumstances as denote an intention existing at the time, coupled with a present ability of using actual violence against the person of another, will be considered an assault.” [Citations.]

(*People v. Colantuono* (1994) 7 Cal.4th 206, 219.)

The defendant in *People v. Chance*, *supra*, 44 Cal.4th 1164 was held to have the “present ability” to inflict injury, as required for the crime of assault on police officer, even though there was no round in firing chamber of his gun and he did not point gun at officer. The defendant hid behind a trailer and pointed the loaded gun at a place where he believed Officer Murdoch would appear. The officer instead approached defendant from behind thwarting the defendant’s plan.

Defendant contends he lacked the present ability to inflict injury not only because he was aiming in the opposite direction from Murdoch, but also because Murdoch had him covered and would have shot him first. However, this argument cannot be squared with cases demonstrating that an assault may occur even when the infliction of injury is prevented by environmental conditions or by steps taken by victims to protect themselves.

(*Id.* at p. 1173.)

Here, defendant’s loaded weapon and concealment behind the trailer gave him the means and the location to strike “immediately” at Sergeant Murdoch, as that term applies in the context of assault. Murdoch’s evasive maneuver, which permitted him to approach defendant from behind, did not deprive defendant of the “present ability” required by section 240. Defendant insists that ... he never pointed his weapon in Murdoch’s direction. That degree of immediacy is not necessary ... .

(*Id.* at pp. 1175-1176.)

If a firearm is deliberately and unlawfully fired towards another person in a manner likely to produce great bodily injury, the offense of assault with a deadly weapon is completed. (*People v. Wright* (1968) 258 Cal. App. 2d 762, 767.)

Other case examples also illustrate when a defendant’s behavior is sufficient to complete the crime of assault with a deadly weapon. In *People v. Nguyen* (2017) 12 Cal.App.5th 44, the appellate court upheld the defendant’s conviction for aggravated assault on a police officer when he wielded a large knife and stepped toward the officer, rejecting the argument that being 10 to 15 feet away deprived the defendant of the present ability to inflict injury. In *People v. Escobar* (1992) 11 Cal.App.4th 502, the appellate court upheld a conviction when the victim heard the defendant cock a loaded firearm, even though the gun was concealed in a leather purse, and the defendant never pointed the weapon. In *People v. Orr* (1974) 43 Cal.App.3d 666, the defendant pointed a loaded rifle at the victim, backed him into a ditch, then fled. The defendant’s conviction of assault with a deadly weapon was upheld. In *People v. Thompson* (1949) 93 Cal.App.2d 780, the defendant pointed a loaded pistol towards police officers and said he would not submit to arrest. Again, the conviction of assault with a deadly weapon was affirmed. (Similarly, see

*People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1326.)

### **Laws of Self-Defense**

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is 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...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace." Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures." (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)

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.

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 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 of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

**CAL CRIM 3470 (REVISED 2012)  
RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER**

**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, 197.) 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 Court 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*, 471 U.S. at p. 11.)

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. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) 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. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 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. (*Graham v. Connor, supra*, 490 U.S. at p. 396.) The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (*Tennessee v. Garner* (1985) 471 U.S. at p. 8-9. The most important of these factors is the threat posed by the suspect. (*Smith v. City of Hemet* (2005) 394 F.3d 689,702.)

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* (1992) 954 F.2d 343, 347.)

### **Reasonableness: The Two Prongs**

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a "reasonable ground to apprehend" a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be "sufficient to excite the fears of a reasonable person." This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed, for they are part of the same equation. "Reasonableness," after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

While the test, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must take into consideration all the facts and circumstances that might be expected to operate in the persons mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

### **Imminence of Perceived Danger**

"Imminence is a critical component of both prongs of self-defense." (*People v. Humphrey, supra*, 13 Cal.4th at p. 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense is based on the reasonable appearance of imminent peril of death, or serious bodily injury to the party assailed. In *People v. Aris* the trial court

clarified that imminent peril means that the peril must have existed, or appeared to the person to have existed, at the very time the shot was fired. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188 disapproved on another ground in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal. 4th 768,783 quoting *People v. Aris, supra*, 215 Cal.App.3d at p. 1187.)

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

### **Retreat and Avoidance**

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM No. 3470.) Indeed, in California the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.)

### **Nature and Level of Force**

The right of self-defense is limited to the use of such force as is reasonable under the circumstances. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 200; *People v. Minifie, supra*, 13 Cal.4th at p. 1065; *People v. Moody* (1943) 62 Cal.App.2d 18,22.)

Case law does not impose a duty to use less lethal options. “Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” (*People v. Collins, supra*, 189 Cal.App.2d at p. 578.)

The rationale for vesting the police officer with such discretion was explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless



second-guessing of police decisions made under stress and subject to the exigencies of the moment.

*Scott v. Henrich* (1994) 39 F.3d 912, 915.

In summary, an honest and objectively reasonable belief that lethal force is necessary to avoid what appears to be an imminent threat of death or great bodily injury will justify the use of deadly force. This is true even if the person acting in self-defense could have safely withdrawn or had available to him a less lethal means of defense.

### **ANALYSIS**

Deputies Tiel, Rodriguez, Holt and Gonzalez attended a pre-shift briefing that included information on Roger Tindell. The deputies were informed that Tindell was wanted in Nevada in connection with a double homicide, that he was likely armed with a 9mm handgun and that his cell phone had “pinged” in the Yucca Valley area. The deputies would later become aware that Tindell may have been responsible for a shooting that occurred in the area where his phone had “pinged”.

#### **First Officer Involved Shooting: 11000 block of San Jacinto Street**

Deputy Tiel’s attempted traffic stop of Tindell’s vehicle resulted in a pursuit. When Tindell stopped his vehicle on San Jacinto Street, it appeared to Deputy Tiel that Tindell pointed a handgun towards his front passenger, Witness #2, and pulled the trigger. Fearing that Tindell had shot his passenger, Deputy Tiel aimed his Mini 14 rifle at Tindell and fired.

Not only was Tindell in possession of a dangerous/deadly weapon, but he actually discharged that weapon from inside his vehicle. Deputy Tiel had an honest and objectively reasonable belief that Tindell posed an imminent threat of serious bodily injury or death. Deputy Tiel’s decision to use deadly force in response was justified.

#### **Second Officer Involved Shooting: San Jacinto Street and Mojave Drive**

The pursuing deputies witnessed Tindell’s erratic driving and his willingness to fire his weapon, not only at a residence, but at them as well. The pursuit terminated when Tindell crashed into Sgt. Everhart’s vehicle. The deputies ordered Tindell to show his hands. Tindell, however, immediately began firing his weapon; the deputies returned fire.

Each deputy was presented with a volatile and dangerous situation. Each deputy expressed concern not only for his/her own safety, but the safety of others. The deputies returned fire based upon that fear. They continued to fire their weapons until Tindell complied with their commands.

Tindell demonstrated a willingness to fire his weapon putting the health and safety of others at risk. With those facts, each deputy acted under an honest and objectively reasonable belief that lethal force was necessary to avoid what appeared to be an imminent threat of death or great bodily injury.

### **CONCLUSION**

Based on the information provided, and the applicable law, the use of lethal force by Deputies Tiel, Rodriguez, Holt, and Gonzalez was a proper exercise of self-defense and defense-of-others. Their actions, therefore, were legally justified.

**Submitted By:**  
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**Dated: September 3, 2020**

