

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

TRENTON VICINAGE

TIMOTHY EPIFAN

PLAINTIFF,

v.

FRANCISCO ROMAN, COUNTY OF SOMERSET
COUNTY OF SOMERSET BOARD OF CHOSEN
FREEHOLDERS
SOMERSET COUNTY PROSECUTOR'S OFFICE
DAVID WHIPPLE, SOMERSET COUNTY
PROSECUTOR'S OFFICE
BOROUGH OF MANVILLE, NEW JERSEY
MANVILLE POLICE DEPARTMENT
OFFICERS JAMES PATERNO, DAVID SHERFFRIN, JOHN
CRATER, JOHN GRANAHAN, MARK PELTACK, JOHN
FODER
MOTION PICTURE ASSOCIATION OF AMERICA, INC.
WILLIAM SHANNON, BONNIE PETERS, PHILIP
KOSCIELECKI, JOHN DOES 1-20
ABC CORPORATION/BUSINESS ENTITIES 1-20
ABC PUBLIC ENTITIES 1-20

DEFENDANTS

CASE NO. 3:11-CV-02591-FLW-TJB

CIVIL ACTION

EXPERT REPORT OF:

William C. Wilks

DATES OF DOCUMENT EXAMINATION

July, August, September, and October 2013

REPORT REQUESTED BY:

Gerald H. Clark, Esq.
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DATE OF REPORT

November 6, 2013

Table of Contents

A. Depositions and Documents	Page 3
I. Opening Comment	Page 4
II. Introduction	Page 4-7
III. New Jersey Attorney General Guideline – New Jersey Vehicular Pursuit Policy	Page 7-9
IV. New Jersey Attorney General Guideline – Use of Force	Page 9-10
V. New Jersey Attorney General Guideline – Internal Affairs Investigations	Page 11
VI. Somerset County Prosecutor’s Office – Rules and Regulations	Page 11-12
VII. Plans, Communications, and Allocation of Personnel	Page 12-14
VIII. Analysis	Page 14-22
IX. Conclusion	Page 22-27

A. Depositions and Documents

The depositions and documents in this matter, listed below, were reviewed:

1. Abridged Deposition Transcripts of Timothy Epifan, Volumes 1 and 2;
2. Deposition Transcript of Paul Epifan;
3. Deposition Transcript of Lieutenant John Crater dated April 18, 2013;
4. Deposition Transcript of Francisco Roman dated April 23, 2013;
5. Deposition Transcript of Francisco Roman dated June 18, 2013;
6. Deposition Transcript of David Whipple dated June 18, 2013;
7. Deposition Transcript of Kathleen Hille dated January 15, 2013;
8. Certification of Kathleen Hille;
9. Narrative Report of Lance Markbreiter, M.D., dated October 12, 2012 and September 20, 2013;
10. Affidavit of Probable Cause in support of Complaint;
11. County of Somerset Investigation Report, Supplementary Investigation Report and Incident Report;
12. Manville Police Department Investigation Report;
13. Diagram of Accident;
14. Photographs of Incident Scene, Injuries, and Forensic documents;
15. Manville Police Department General Complaint and Police Report;
16. Defendant Borough of Manville, Manville Police Department, etc. Discovery Responses;
17. CD of 911 Audio Tape;
18. Use of Force Report;
19. Use of Force Policy;
20. Criminal Investigation Division, Detective Manual and Rules and Regulations;
21. New Jersey Attorney General's Guidelines on Use of Force;
22. New Jersey Attorney General's Guidelines on Vehicular Pursuit Policy;
23. New Jersey Attorney General's Guidelines for Internal Affairs Investigations;
24. Detective Sergeant Francisco's resume and employment history;
25. Defendant Somerset County Prosecutor's Office: David Whipple, John Fodor, and Francisco Roman
Discovery Responses;
26. New Jersey Criminal Codes (2C) Manual;
27. Black's Law Dictionary, Ninth Edition, April 2009, West Publishing Company.

All conclusions reached herein are within a reasonable degree of certainty in the field of law enforcement. I reserve the right to change or amend my opinions and conclusion should further information be brought to my attention.

I. Opening Comment

Planning, communications, allocation of personnel, adherence to all Laws, and Guidelines set down by the New Jersey Attorney General, are issues to be considered and addressed prior to initiating an operation. The absolute safety of all persons; civilians, law enforcement personnel and suspect, is paramount when considering the manner in which the plan will be carried out.

II. Introduction

Francisco Roman Jr. was, and remains, employed by the Somerset County Prosecutor's Office (SCPO). On July 10, 2009, Francisco Roman held the rank of Detective Sergeant (DSgt.) DSgt. Roman's responsibilities included, but may not have been limited to, command of the SCPO Major Crimes Unit. In July of 2011, Francisco Roman was promoted by the Somerset County Prosecutor to the rank of Detective Lieutenant. DSgt. Roman's Curriculum Vitae reflects his employment with the SCPO, Middlesex County Sheriff's Department (MCSD), and his military career in the United States Marine Corps (USMC). Notable in DSgt. Roman's Curriculum Vitae is his experience, assignments, training, and awards. DSgt. Roman's Curriculum Vitae focuses the reader's attention on the various training he has received (most notably the Basic Course for Police Officers and Internal Affairs Policies and Procedures). DSgt. Roman's Curriculum Vitae does not mention his training in the Use of Force and Vehicular Pursuit. Semi-annual training in the Use of Force and Vehicular Pursuit is required by the New Jersey Attorney General. DSgt. Roman's failure to mention the semi-annual training in the Use of Force and Vehicular Pursuit is interesting because of DSgt. Roman's failure to adhere to the requirements of these guidelines. Adherence to Use of Force, Vehicular Pursuit and Internal Affairs Investigations Guidelines are at the heart of the conduct of the defendants in this matter.

On June 29, 2009, the SCPO was contacted by a member of the Motion Picture Association of America (MPAA) concerning their investigation into an individual who it was believed would be copying movies without permission and share them over the internet in violation of State and Federal Laws.

A meeting was held at the SCPO, located at 40 North Bridge Street, Somerville, New Jersey. The following personnel attended the meeting:

1. William Shannon (Shannon), Deputy Director of East Coast Operations and Field Investigators for the MPAA;
2. Phil Koscielecki (Koscielecki), MPAA;

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3. John Coghlan (Coghlan), MPAA;

4. SCPO Detective David P. Whipple (Whipple), Somerset County Prosecutor's Office.

During this meeting, Deputy Director Shannon reported that their investigation had developed and had identified a potential target. The target was identified as Timothy Epifan, whose last known address was 2155 Perrine Road, Martinsville, New Jersey. Timothy Epifan was familiar to Detective Whipple.

Timothy Epifan's background did not allude to or show a propensity towards any sort of violence or force.

On July 10, 2009 (time unknown), Detective Whipple was contacted by Shannon advising him that the MPAA investigators had developed information that Timothy Epifan was planning on illegally copying a new movie release (Bruno), at a theater in Manville. Although the exact time that Timothy Epifan was planning on actually copying the movie was unknown, it was determined that the first showing of the targeted movie (Bruno) would be at 11:00 A.M. on July 10, 2009. Shannon also advised Detective Whipple that private investigators were conducting a surveillance of the Epifan home. It was subsequently determine by the MPAA investigators that Timothy Epifan had travelled to the theater in Manville (Reading Cinema, 180 North Main Street) with another male (subsequently identified as Tim Epifan's brother, Paul). Timothy Epifan was inside the movie theater recording the movie "Bruno". MPAA investigators notified Detective Whipple. Then Detective Whipple notified Lieutenant John Crater, of the Manville Police Department, regarding the investigation into the piracy. Detective Whipple requested the assistance of the Manville Police Department.

Around 11:35 A.M., Lieutenant Crater was contact by Detective Whipple informing him that the MPAA investigators had followed the Epifan vehicle to the Manville Reading Cinema. The MPAA investigators observed that the occupants of the Epifan vehicle had entered the theater where the movie, "Bruno" was being shown. Detective Whipple and Lieutenant Crater responded to the Manville Reading Cinema. DSgt. Roman, in an unmarked law enforcement vehicle owned by the SCPO, also responded to the Manville Reading Cinema at some point.

Beyond a short conference with the investigators of the MPAA, there is nothing in the record to show that the investigators Roman and Whipple, of the SCPO, were familiar with the overall parking area of the Manville Reading Cinema. Furthermore, there is no documentation in the available records that shows law enforcement officers, Roman and Whipple, were briefed as to the layout of the area surrounding the theater building. The plan for the arrest of Timothy Epifan, put in place and approved by Officer-In-Charge, DSgt. Roman, was that Timothy Epifan would be arrested once he and his brother, Paul returned to their vehicle. Ostensibly this plan to arrest Timothy Epifan and detain his brother, Paul outside of the theater would ensure the safety of other civilians attending the various movies at the theater, the law enforcement officers, and the suspects.

The Reading Cinema faces West with numerous parking spaces in front of the theater. On the North side, there are several parking spaces. North of the parking spaces, there is an open field adjacent to a

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highway. On the East side of the theater there is a high voltage fence, and to the South, there are additional parking spaces. The East side of the theater is accessible from both the North and South sides of the theater.

Lieutenant Crater and Detective Whipple's surveillance point was on the South side border of the parking lot. Sergeant Roman's surveillance point was on the North side of the parking lot. On the East side of the theater, Sergeant James Paterno had parked his marked Manville police vehicle. Sergeant Paterno was subsequently joined by Patrolman J. Granahan of the Manville Police Department, who was also operating a marked Manville police vehicle. There is nothing in the record to show that Patrolman Granahan was an assigned member of the detail investigating the piracy complaint.

Once Timothy Epifan and his brother, Paul left the movie theater, they walked towards their parked vehicle. When they were in the immediate vicinity of their vehicle, Detective Whipple and Lieutenant Crater approached them. After exiting their unmarked police vehicle, Detective Whipple and Lieutenant Crater reported that they identified themselves as police officers and ordered the two men, Timothy and Paul Epifan, to remain where they were. Paul Epifan remained at the vehicle. Timothy Epifan ran from the scene, kicking off his flip-flop type footwear. Lieutenant Crater began a foot pursuit of Timothy Epifan, while Detective Whipple detained Paul Epifan.

The path of the foot pursuit started with Timothy Epifan running North (from the parked vehicle past the front of the cinema building) to the Northwest corner of the cinema building Timothy Epifan continued to run East. Timothy Epifan ultimately stopped running, and raised his hands in a sign of surrender. Timothy Epifan was subsequently struck by an unmarked SCPO police vehicle, operated by DSgt. Roman.

While in foot pursuit, Lieutenant Crater yelled to Timothy Epifan to stop, that he was under arrest. Lieutenant Crater radioed police headquarters that he was in foot pursuit (of Timothy Epifan).

Timothy Epifan ran past the front of the Reading Cinema building, reported he then turned right at the corner of the building (Northwest corner). During the foot pursuit, Lieutenant Crater reported he observed Timothy Epifan throwing a video camera towards the North wall of the Reading Cinema building. Timothy Epifan continued to run in an Easterly direction just to the North side of the cinema building. When Timothy Epifan approached the area South of the cinema building, he realized that immediately South of the cinema building was a 7000 volt, high voltage fence. Attached to the fence was a danger sign ("Peligro") warning of the high voltage. This high voltage fence separates the Reading Cinema property from the adjoining property. Timothy Epifan reportedly stopped running, raised his hands, and was immediately struck from behind by the unmarked police vehicle operated by DSgt. Roman.

Lieutenant Crater reported that while he was pursuing Timothy Epifan on the North side of the cinema building he heard a police siren approaching from his rear. The vehicle, operated by DSgt. Roman passed Lieutenant Crater. DSgt. Roman ultimately struck Timothy Epifan, knocked him down, and dragged him along the asphalt pavement. While lying on the ground injured, unable to move, Timothy Epifan was formally placed under arrest. The use and manner in which DSgt. Roman operated his unmarked law enforcement vehicle to pursue and apprehend Timothy Epifan was a violation of the New Jersey Attorney General's Vehicular Pursuit Policy, and the policy regarding the Use of Deadly Force.

The use of a marked or unmarked law enforcement vehicle to pursue a suspect is enumerated in the New Jersey Attorney General's Guidelines Vehicle Pursuit Policy. The policy does not specifically address the use of law enforcement vehicles in pursuit of a suspect's fleeing on foot. However, the fundamental principles of the policy can be applied to the use of law enforcement vehicles in pursuing suspects on foot. The New Jersey Attorney General's Guidelines regarding the Use of Force and Internal Affairs Investigations are also applicable in this case.

III. New Jersey Attorney General's Guidelines – New Jersey Vehicular Pursuit Policy

The New Jersey Attorney General's Policy for New Jersey Police Vehicular Pursuit were initially issued in December 1985, and revised in January 1993, September 1999, December 2001, and July 2009.

Paragraph I (Deciding Whether to Pursue), Section A (Authorization to Pursue) states in Sub-Section A1a and b: a police officer may only pursue:

- "a. When the officer reasonably believes that the violator has committed an offense of the first or second degree or for any of the following offenses: Death by Auto, Aggravated Assault, Criminal Restraint, Aggravated Criminal Sexual Assault, Arson, Burglary, Automobile Theft, Theft by Extortion, Escape, or Manufacturing, Distributing or Dispensing of CDS.
- b. When a police officer reasonably believes that the violator poses an immediate threat to the safety of the public or other police officers."¹

Paragraph I (Deciding Whether to Pursue, Section A (Authorization to Pursue) states in Sub-Section B1 and 2:

- "1. Likelihood of successful apprehension.
- 2. Whether the identity of the violator is known to the point where later apprehension is possible."²

Paragraph I (Deciding Whether to Pursue, Section A (Authorization to Pursue) states in Sub-Section B3a,b, c, and e (Degree of risk created by pursuit):

- "a. Volume, type, speed and direction of vehicular traffic.
- b. Nature of the area: residential, commercial, school zone, open highway, etc.
- c. Population density and volume of pedestrian traffic.
- e. Road conditions."³

¹ New Jersey Attorney General Guideline: Vehicular Pursuit – New Jersey Police Vehicular Pursuit Policy. Page 5, 2009.

² Ibid.

Paragraph I (Deciding Whether to Pursue, Section A (Authorization to Pursue) states in Sub-Section C1b and c (Terminating the pursuit):

- “b. The officer believes that the danger to the pursuing officers or the public outweighs the necessity for immediate apprehension of the violator, or
- c. If the violator’s identity is established to the point where later apprehension may be accomplished and where there is no immediate threat to the safety of the public or police officers.”⁴

Paragraph III (Vehicular Pursuit Restrictions), Section A (No pursuits will be conducted) states in Sub-Section F: “Throughout the course of a vehicular pursuit, pursuing officers shall not attempt to overtake or pass the violator ...”⁵

Paragraph IX, Section A (Pursuit Reporting) of the guideline states in pertinent part “All law enforcement officers who operate a law enforcement vehicle in vehicular pursuit situations shall be required to file a pursuit incident report. Pursuit incident reports are to be filed in a manner established by agency operating procedures and should contain, at a minimum, the following information:

1. Location, date and time of pursuit initiation.
2. Location, date and time of pursuit termination.
3. Highest speed achieved, weather conditions, road surface and description of pursuit area.
4. Reasons for initiating and terminating the pursuit.
5. Consequences of the pursuit, such as accidents, injuries, fatalities.
6. Whether or not the violator was apprehended.
7. The offenses with which the violator was charged.”⁶

Based on the information available to me, this report was never filed by DSgt. Roman. Furthermore, the SCOP did not conduct a pursuit review as required by the New Jersey Attorney General’s Guidelines for Vehicular Pursuits as required in Paragraph X (Vehicular Pursuit Review), Sub-Sections A through C.

Paragraph X (Vehicular Pursuit review), Sub-Sections A through E states:

³ Ibid. Page 5 and 6. 2009.

⁴ Ibid. Page 6. 2009.

⁵ Ibid. Page 8. 2009.

⁶ Ibid. Page 12 and 13. 2009

- "A. All law enforcement agencies shall establish procedures for the formal review of all pursuit incident reports.
- B. Pursuit incidents should be reviewed for compliance with applicable policy and department operating procedures.
- C. Pursuit incidents should also be reviewed to identify the need for remedial training of individual officers or specific areas of emphasis in agency-wide training regarding pursuit situations and the application of pursuit policies and procedures."
- D. Periodic review of pursuit incidents and summary pursuit information should be conducted in order to identify any additions, deletions or modifications warranted in departmental pursuit policies.
- E. Every law enforcement agency shall conduct an investigation when one of its vehicles collides with another vehicle or any other object during the course of a pursuit."⁷

IV. New Jersey Attorney General's Guidelines Regarding Use of Force

DSgt. Roman's decision to initiate a vehicular pursuit of a person running on foot, contrary to the guidelines for vehicular pursuits, culminated with an unwarranted degree of physical force against Timothy Epifan.

The New Jersey Attorney General's Guidelines for the Use of Force were initially issued in 1985 and revised in June of 2000. As part of this particular guideline, it is recognized that a police officer may have to employ a degree of force in the performance of his or her sworn duties. However, it is also imperative that the officer remember that he or she must exercise the utmost restraint when employing force, that only the force necessary to effectively carry out their duty is employed and that all other reasonable means must be exhausted before using force. It is clearly stated in the Use of Force Policy: "It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary."⁸

There are three degrees of force defined by the Use of Force Policy:

1. Physical Force;⁹
2. Mechanical Force;¹⁰ and

⁷ Ibid. Page 13 and 14. 2009.

⁸ New Jersey Attorney General's Guideline on Use of Force, Policy, Page 1, Paragraph 2. June 2000.

⁹ Ibid. Definitions, Page 3, Definitions, Sub-Section C – Physical Force. June 2000.

¹⁰ Ibid. Definitions, Page 3, Sub-Section D – Mechanical Force. June 2000.

3. Deadly Force.¹¹

Deadly Force is defined in the policy as a “force which the law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing death or serious bodily harm.”¹²

There are limitations with regard to employing the varying degrees of the Use of Force. The limitations on using deadly force are:

1. “A law enforcement officer may use deadly force when the officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
2. A law enforcement officer may use deadly force to prevent the escape of a fleeing suspect
 - a. who the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm; and
 - b. who will pose an imminent danger of death or serious bodily harm should the escape succeed; and
 - c. when the use of deadly force presents no substantial risk of injury to innocent persons.”¹³

Inasmuch as there are limitations on the Use of Force, there are also restrictions on the Use of Force.

A law enforcement officer “shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or other person”.¹⁴

In all cases where Use of Force is applied, whether it is physical, mechanical or deadly force, each officer who has employed such force shall complete:

1. Any reports necessary by the nature of the underlying incident; and
2. Use of Force Report.¹⁵

¹¹ Ibid. Definitions, Page 3, Sub-Section E – Deadly Force. June 2000.

¹² Ibid. Definitions, Page 3, Sub-Section E – Deadly Force. June 2000.

¹³ Ibid. Authorization and Limitations, Page 5, Sub-Section B – Use of Deadly Force. 2000.

¹⁴ Ibid. Restrictions On The Use of Deadly Force, Page 5, Sub-Section C1 – Restrictions on the Use of Deadly Force. 2000.

¹⁵ Ibid. Section III, Sub-Section A1 and 2. 2000.

V. New Jersey Attorney General's Guidelines For Internal Affairs Investigations

The New Jersey Attorney General's Guidelines for Internal Affairs Investigations, section entitled "Rules and Regulations" states "The agency's rules and regulations should form a "code of conduct" for employees."¹⁶ This section goes on to say "The rules and regulations should identify general categories of misconduct or inappropriate behavior that are subject to disciplinary action. An incident of misconduct or inappropriate behavior may fall into one or more of the following categories:

1. Crime
2. Excessive Force
3. Improper Arrest
4. Improper Entry
5. Improper Search
6. Differential treatment
7. Demeanor
8. Serious rule infractions
9. Minor rule infractions."¹⁷

VI. SCPO Rules and Regulations: Criminal Investigation Division, Detective Bureau, Detective Manual

Wayne J. Forrest, Prosecutor

The SCPO Rules and Regulations Manual is a seventy-seven (77) page confidential document issued and assigned, by serial number, to all Somerset County Prosecutor's Office personnel. The Manual remains the property of the prosecutor's office. Upon separation from the prosecutor's office, personnel are required to return their copy of the Manual to the prosecutor's office. The Manual was "adopted by the Somerset County Prosecutor's Office for the governing, discipline, administration and operation of the Somerset County Prosecutor's Office."¹⁸

¹⁶ New Jersey Attorney General's Guidelines for Internal Affairs Investigations, Rules and Regulations, Paragraph 1, Page 8. 05/2011.

¹⁷ Ibid. Rules and Regulations, Paragraph 2, Pages 8 and 9.

¹⁸ Ibid. Page 6.

"Flexibility, initiative, and the exercise of independent judgment, within the framework of this manual, is left to the sound discretion and intelligence of all members of the Criminal Investigation Division Detective Bureau in compliance with the underlying spirit and intent of the rules and policies herein set forth."¹⁹

"The SCPO is governed by the New Jersey Attorney General's Guidelines, and SCPO Directives and General Orders in matters of disciplinary action. This fact is enumerated in their rules and regulations under Article VIII, Disciplinary Action, Section 8.1 Policy."²⁰ Reference is also made to: the operation of motor vehicles and how "detectives should drive with due care and circumspection."²¹, and "the use of force".²²

VII. Plans – Communications – Allocation of Personnel

The plans put into place for the arrest of Timothy Epifan were simple and direct. Once the investigators confirmed that Timothy Epifan was recording the movie he and his brother, Paul would be arrested as they approached their car. This was to ensure the safety of other movie goers. As the supervisor, or Officer-In-Charge, as DSgt. Roman was regarding this case, he should have been present for each phase of the planned arrest of Timothy Epifan.

DSgt. Roman states "Detective Whipple along with Manville Police Officers and Investigators from the Motion Picture Association proceeded into the cinema in an attempt to identify and observe the Epifans videotaping the new movie release, while I maintained visual surveillance of the aforementioned vehicle."²³ DSgt. Roman, in his deposition of April 23, 2013, states he was at the scene to "assist the team"²⁴. In another portion of his deposition DSgt. Roman maintains he "showed up afterwards" in reference to conversations Lieutenant Crater had with members of the MPAA when "they initially made contact with them at the cinemas".²⁵

A number of conflicting statements were found while reviewing reports versus answers given in depositions. The conflicting statements have an impact on the consideration given to planning the arrest of Timothy Epifan. DSgt. Roman was the supervising officer responsible for the overall operation, yet it is very questionable as to just how much input and attention DSgt. Roman paid to the details of the plan. When considering the following statement by Lieutenant Crater, wherein he states "Lieutenant Roman did not get there at the same time. He came some time after Sergeant Whipple and I arrived there, but I couldn't tell you

¹⁹ Ibid. Page 8.

²⁰ Somerset County Prosecutor's Officer Rules and Regulations, Article VIII, Section 8.1 Policy, Page 62.

²¹ Ibid. Section 3:6, Sub-Section 3:6.7, Page 39.

²² Ibid. Section 3:10, Sub-Section 3:10.1 a & b. Page 46 and 47.

²³ Francisco Roman's Answers to Interrogatories, Page 6, Paragraph 1, Lines 9-12.

²⁴ Francisco Roman Deposition, April 23, 2013, Page 48, Line 18.

²⁵ Ibid, Page 60, Lines 17-20.

when, and I don't remember which conversation he knew about".²⁶ This contradicts statements in DSgt. Roman's report of July 10, 2009, wherein he writes "At the cinema we met with MPAA investigators and Detective Sergeant Francisco Roman, commander of the Somerset County Prosecutor's Office Major Crime Squad".²⁷

Detective Whipple states "It was a general decision amongst us all. I did not instruct him to do anything with his personnel specifically. An operational plan was derived by a group of law enforcement that were present".²⁸

Although DSgt. Roman maintains he participated in the planning for the arrest of Timothy Epifan, there is nothing, by either Lieutenant Crater or Detective Whipple, to suggest DSgt. Roman participated in the planning. A review of Sergeant Paterno's report made no mention of DSgt. Roman being present during any phase of the planning for this operation.

The ability of the SCPO to communicate with a Manville police officer, a Manville police vehicle or the portable radios carried by the Manville police officers, or visa versus, was not a consideration for this operation. This was a failure by the two law enforcement agencies senior officers, DSgt. Roman and Lieutenant Crater. Lieutenant Crater indicated, for example, that the SCPO has the capability to monitor Manville Police Department communications, but Lieutenant Crater did not know if DSgt. Roman was in fact monitoring all communications. DSgt. Roman, Officer-In-Charge, should have been monitoring all communications. Detective Whipple further reinforces the lack of communications cohesion when he states "he was not able to hear, nor did he listen to, any of the Manville police communications on the day and time in question."²⁹

Looking at the allocation of personnel for this operation, it is apparent that senior officers (Crater and Roman) did not know where personnel had been assigned. Also, they did not know an additional patrol officer had taken it upon himself to join the investigation. Lieutenant Crater's deposition supports this belief wherein he states "I have no idea where Sergeant Paterno was. I had told him to stay out of view and he didn't tell me where he was going."³⁰ Lieutenant Crater goes onto say "I knew that Lieutenant Roman was going to be on the North side of the parking lot but I actually never saw him at that point and I don't know where he was".³¹ If Lieutenant Crater did not know where the Manville police officers had positioned themselves, it stands to reason that Detective Whipple and DSgt. Roman were also unaware of Sergeant Paterno's location, or that

²⁶ Lieutenant John Crater Deposition of April 18, 2013. Page 53, Lines 18-22.

²⁷ Lieutenant John Crater's Manville Police report dated July 10, 2009. Page 2, Paragraph 3.

²⁸ Detective David Whipple Jr.'s Deposition of June 18, 2013. Page 60, Lines 13-17.

²⁹ Ibid. Page 55, Lines 6-9.

³⁰ Lieutenant John Crater Deposition of April 18, 2013. Page 61, Lines 19-21.

³¹ Ibid. Page 61, Lines 22-25.

Patrolman Granahan had joined the investigative team, and was parked next to Sergeant Paterno. In the final analysis it appears the supervisors, DSgt. Roman and Lieutenant Crater, from the two law enforcement agencies had no idea where their officers were stationed, or who was actually part of the investigative team.

It is absolutely essential that site supervisors have a working knowledge of exactly where their personnel have positioned themselves (or the location assigned to a particular officer), and what personnel have been assigned to an investigation. The importance of knowing where personnel have positioned themselves, or what personnel were on site as part of the arrest team, can be found in a response by Detective Whipple when he talks about leaving the Epifan vehicle, with Paul Epifan in his unmarked SCPO vehicle, to travel to the rear of the cinema. Detective Whipple states that "he almost had a collision with a Manville Police marked unit."³²

VIII. Analysis

DSgt. Roman's recollection of how the collision between his (Roman) vehicle and Timothy Epifan occurred is not consistent with the physical evidence found and recorded at the scene of the collision. Simply stated, the physical evidence contradicts DSgt. Roman's rendition of the chain of events leading up to the impact, the impact, and post-impact.

A. Physical Evidence-Collision Related

Physical evidence such as tissue/ blood/skin samples, a drag mark, and a dent to DSgt. Roman's vehicle have been recorded in photographs taken at the scene of the collision. Also shown in the photographs are chalk marks, and a super-imposed stick figure.

The chalk markings on the parking lot macadam, as shown in the photographs, identify the location where Timothy Epifan came to rest after being struck by DSgt. Roman's vehicle. The chalk markings include the words: head, left foot and right foot. DSgt. Roman agrees that the photographs reflect where Timothy Epifan came to rest after the collision.³³

DSgt. Roman denied that from the initial point of impact with Timothy Epifan, to the point Timothy Epifan was no longer entangled with his (Roman) vehicle, he dragged Timothy Epifan after striking him with his vehicle.

Despite DSgt. Roman's assertion that he did not drag Timothy Epifan after striking him, he (Roman) confirms, in his deposition of April 23, 2013, that the pictures he was shown point out yellow chalk markings that reference Timothy Epifan's body position after being struck by DSgt. Roman's vehicle. DSgt. Roman also agreed that:

³² Detective David Whipple Jr. Deposition of June 18, 2013. Page 38, Lines 24 & 25, Page 39, Line 1.

³³ Francisco Roman Deposition of April 23, 2013. Page 99, Lines 16-20.

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1. A white kind of streak mark, shown in one of the photographs, leads up to where the foot and head notation is indicated in the photograph.³⁴
2. Blood on the macadam pavement lines up where Timothy Epifan's legs would have been immediately after impact.³⁵
3. "There's discoloration of the pavement, yes, I would agree there's discoloration of the pavement which is in the same proximity as the chalk marks which were the left leg, right leg".³⁶

In DSgt. Roman's deposition he states that he could not say the marks in the macadam were drag marks. The following question was asked of DSgt. Roman, (followed by his answer):

Q: "How about just in layman's terms, you know, common sense type terms, in seeing the macadam, the white streak, knowing what happened that day, and seeing the pictures, would it surprise you if those were kinds of abrasions, scrapes, drag marks from the accident?"³⁷

A: "I mean when you say would it surprise me if it was an abrasion or scrape. No, it wouldn't surprise me, but I can't sit here and tell you those are drag marks".³⁸

However, Lieutenant Crater, when shown the same photograph, did not dispute the fact that the marks seen in the picture could have been drag marks.³⁹

When DSgt. Roman was asked if he agreed with Lieutenant Crater's statement, he replied "The same way I answered before sir. You know, could be. (My emphasis) I've never looked at photographs of drag marks. I wouldn't know if they would look like that".⁴⁰

However, Dr. Lance Markbreiter disputes DSgt. Roman's assertion that he (Roman) did not drag Timothy Epifan after striking him (Epifan) with his (Roman) vehicle. Dr. Markbreiter's medical opinion confirms that Timothy Epifan was dragged after being struck by DSgt. Roman's vehicle.⁴¹

³⁴ Ibid. Page 105, Lines 5-8.

³⁵ Ibid. Page 102, Lines 2-25, Page 103, Lines 2-25.

³⁶ Ibid. Page 103, Lines 6-9.

³⁷ Ibid. Page 112, Lines 18-22.

³⁸ Ibid. Page 112, Line 25, Page 113, Lines 1-2.

³⁹ Lieutenant John Crater Deposition, April 18, 2013. Page 120, Lines 11-19

⁴⁰ Francisco Roman Deposition, April 23, 2013. Page 120, Lines 11-19.

⁴¹ Dr. Lance Markbreiter Report, September 20, 2013.

An examination by DNA Diagnostics Center of Fairfield, Ohio, of physical evidence recovered at the scene of the collision between DSgt. Roman's vehicle and Timothy Epifan – The physical evidence was recovered by Timothy Epifan's parents – showed that the physical evidence submitted for forensic examination belonged to Timothy Epifan. The physical evidence that was collected came as a result of Timothy Epifan being dragged by DSgt. Roman's vehicle. The physical evidence collected, and submitted, for DNA analysis included: skin, blood, tissue and reference standard from Timothy Epifan.⁴² This point was reinforced by the Engineering Accident Reconstruction Analysis Report by Dr. Wayne F. Nolte, PH.D., P.E.⁴³

B. Speed – DSgt. Roman's Vehicle

DSgt. Roman maintained that his speed, at the time of contact with Timothy Epifan, was five (5) miles per hour, or less. DSgt. Roman estimated his highest rate of travel (speed) during his pursuit of Timothy Epifan was around twenty-five (25) miles per hour – more or less. He gauged his maximum speed to the speed in a residential area or school zone.⁴⁴ DSgt. Roman qualifies this answer by stating "that seems to be a safe speed",⁴⁵ "that seems to be a relatively safe assumption".⁴⁶

DSgt. Roman maintained that immediately prior to striking Timothy Epifan, he was coming to a stop. Therefore, DSgt. Roman did not know his speed because he was not looking at his speedometer. However, in his interrogatories and depositions, DSgt. Roman stated he was going less than five (5) miles per hour when he struck Timothy Epifan.

Lieutenant Crater, on the other hand, stated (regarding the Roman vehicle's contact with Timothy Epifan), "It stopped. Obviously, not exactly at the time of impact (my emphasis), as I already said that it was still in motion (my emphasis) but within an estimate of five (5) yards it stopped".⁴⁷

Lieutenant Crater estimated that the Roman vehicle traveled five (5) yards after striking Timothy Epifan. The distance, estimated by Dr. Nolte, that the Roman vehicle traveled after impacting with Timothy Epifan to be more than thirty (30) feet.

DSgt. Roman estimated his maximum speed to be twenty-five (25) miles per hour at some point during his pursuit of Timothy Epifan. DSgt. Roman's estimated speed is consistent with Dr. Nolte's estimated speed of twenty-two (22) to twenty-five (25) miles per hour.

⁴² DNA Diagnostics Center Report, Fairfield, Ohio, September 9, 2009.

⁴³ Wayne F. Nolte, PH.D., P.E. Engineering Accident Reconstruction Analysis Report.

⁴⁴ Francisco Roman Deposition, April 23, 2013. Page 130, Lines 12-14.

⁴⁵ Ibid. Page 130, Line 12

⁴⁶ Ibid. Page 130, Line 14

⁴⁷ Lieutenant John Crater Deposition, April 18, 2013. Page 120, Lines 20-25, Page 121, Line 1.

The critical difference between DSgt. Roman's estimated speed and Dr. Nolte's estimated speed is not the speed, in and of itself, but rather at what point the twenty-five (25) miles per hour speed was in effect. DSgt. Roman states it was his maximum speed, Dr. Nolte, on the other hand, states the twenty-two (22) to twenty-five (25) miles per hour speed was in effect at the time and point of impact.

Based on the estimated speeds given by DSgt. Roman and Dr. Nolte, it is reasonable to assume DSgt. Roman knew the time and point of impact, into Timothy Epifan, and that he (Roman) was traveling at least twenty-two (22) to twenty-five (25) miles per hour.

This is in stark contrast to DSgt. Roman's assertion that he was traveling at a rate of less than five (5) miles per hour when he struck Timothy Epifan. Further, assuming this is correct, I question DSgt. Roman's denial that he looked at his speedometer. The evidence indicates DSgt. Roman knew how fast his vehicle was traveling when he struck Timothy Epifan.

Lieutenant Crater estimated DSgt. Roman's vehicle speed to be under twenty (20) miles per hour. Lieutenant Crater admits "estimating DSgt. Roman's speed was difficult because he was running the siren from Roman's vehicle, tunnel vision and winded".⁴⁸

C. IMPACT – Pre and Post Actions

DSgt. Roman described his actions immediately before striking Timothy Epifan as applying his brakes, traveling at under five (5) miles per hour.⁴⁹

DSgt. Roman was asked, "Just prior to coming into contact with Epifan, did you accelerate your vehicle just before impact"?⁵⁰ DSgt. Roman responded, "No, I was braking. I was coming to a stop so that I can exit my vehicle and initiate foot pursuit".⁵¹

Responding to a question, regarding a photograph that showed the location of DSgt. Roman's vehicle after striking Timothy Epifan, and ultimately coming to a stop, DSgt. Roman replies "That's where I maneuvered my vehicle, but yes that's where it came to stop. That's where I maneuvered my vehicle after Epifan ran into the side panel".⁵²

There are a number of inaccuracies in DSgt. Roman's account. Considering the reconstruction analysis by Dr. Nolte, and the physical evidence, the inaccuracies in DSgt. Roman's account are:

⁴⁸ Ibid. Page 158, Lines 18-20.

⁴⁹ Francisco Roman Deposition, April 23, 2013. Page 78, Lines 21-24, Page 115, Lines 8-11.

⁵⁰ Ibid. Page 117, Lines 20-21.

⁵¹ Ibid. Page 117, Lines 22-23.

⁵² Ibid. Page 119, Lines 16-18.

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1. Timothy Epifan did not run into DSgt. Roman's vehicle.⁵³
2. DSgt. Roman was not traveling at five (5) miles per hour.⁵⁴
3. DSgt. Roman was not applying his brakes, and coming to a stop at the time of impact.⁵⁵
4. DSgt. Roman did not maneuver his vehicle to the point where he ultimately stopped the vehicle. He brought the vehicle under control and stopped. He was traveling twenty-two (22) to twenty-five (25) miles per hour in a small space. According to DSgt. Roman, regarding the operating environment "This is a really tight spot"⁵⁶ and, "not much room for a vehicle to go through, this being the Manville unit in a K-turn".⁵⁷
5. DSgt. Roman states that Timothy Epifan was not dragged immediately upon impact. However, the physical evidence shown in the photographs, the DNA, and Dr. Nolte's report show the opposite is true. Dr. Markbreiter's medical opinion, as stated in his report regarding DSgt. Roman's statement that he (Roman) did not drag Timothy Epifan after striking Epifan his (Roman) vehicle is not consistent with the physical, photographic, DNA, and medical evidence. It is clear that DSgt. Roman did drag Timothy Epifan after striking him (Epifan) with his (Roman) vehicle.⁵⁸

DSgt. Roman has maintained that prior to striking Timothy Epifan at less than five (5) miles per hour, he was applying his brakes. DSgt. Roman describes his subsequent actions: "Once Timothy ran to the right front panel, I had to – I was braking and I had to remove my foot from the brake and slightly accelerate (my emphasis) in order to get away from Timothy. So I maneuvered the vehicle to where, as depicted in the photograph, on to the grassy area, sort of to just get away from him".⁵⁹

DSgt. Roman was not braking, or coming to a stop. This is confirmed in Dr. Nolte's report. Furthermore, in Lieutenant Crater's deposition he (Crater) states " --- and at that point Lieutenant Roman's vehicle was still in motion".⁶⁰

⁵³ Wayne F. Nolte, PH.D., P.E. Engineering Accident Reconstruction Analysis.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Francisco Roman Deposition, April 23, 2013. Page 130, Line 9.

⁵⁷ Ibid. Page 136, Lines 17-18.

⁵⁸ Dr. Lance Markbreiter Report, September 20, 2013.

⁵⁹ Ibid. Page 126, Lines 17-22.

⁶⁰ Lieutenant John Crater Deposition, April 18, 2013. Page 101, Lines 24-25.

To emphasize Lieutenant Crater's reliability, DSgt. Roman was asked "Lieutenant Crater would be a reliable source of information as to what happened at the time of the impact being that he was in the area and witnessed it".⁶¹ DSgt. Roman replied "Yeah, that would be based on Lieutenant Crater's observations and where he was at the time".⁶²

DSgt. Roman maintained that he did not think an individual was struck by a vehicle regarding this matter. DSgt. Roman's position is that Timothy Epifan came into contact with his (Roman) vehicle.

Keeping in mind DSgt. Roman considers Lieutenant Crater a reliable witness and source of information, it is important to remember that at one point in Lieutenant Crater's deposition, he states: "I called our dispatcher, and I told him we need an ambulance for a pedestrian struck by a motor vehicle"⁶³ (my emphasis). The audio recordings of Lieutenant Crater, who was an eyewitness, stated he saw the impact when DSgt. Roman's vehicle struck Timothy Epifan.⁶⁴

DSgt. Roman's actions, and subsequent statements regarding his actions, are contradictory.

DSgt. Roman maintained that he was braking, traveling at less than five(5) miles per hour when he struck Timothy Epifan, but then accelerated " –to get away from the general area in order –in an attempt to avoid basically running over Timothy at that point".⁶⁵

DSgt. Roman knew full well that he had already struck some portion of Timothy Epifan's body. This is confirmed in DSgt. Roman's deposition when he states, "Well, I don't know. I know that his foot –I didn't know his foot came into contact with the vehicle. I don't know whether it was a thigh or whatever it was, hit the side panel –."⁶⁶ This was DSgt. Roman's response to a question as to "why he did not just brake, and stay on the brake? Why take the foot off the brake, why not just stop short, stop, that's it, why not just do that"?⁶⁷

DSgt. Roman goes on to explain that he did not know where Timothy Epifan was. He (Roman) did not know Timothy Epifan's location, did not know if Timothy Epifan had fallen, and if he (Epifan) had fallen, and exactly where he had fallen.⁶⁸

⁶¹ Francisco Roman Deposition, April 23, 2013. Page 122, Lines 19-21.

⁶² Ibid. Page 122, Lines 24-25.

⁶³ Lieutenant John Crater Deposition, April 18, 2013. Page 67, Lines 18-20.

⁶⁴ Ibid. Page 67, Lines 21-23.

⁶⁵ Francisco Roman Deposition, April 23, 2013. Page 127, Lines 4-6.

⁶⁶ Ibid. Page 127, Lines 1-4.

⁶⁷ Ibid. Page 126, Lines 23-25.

⁶⁸ Ibid. Page 127, Lines 12-14.

When asked what happened to Timothy Epifan after impact, when Epifan was pinned under his vehicle, DSgt. Roman stated, "I saw in my peripheral vision, first of all, I heard like the contact. I saw Epifan just fall to the ground. I immediately, as I stated, maneuvered the vehicle, made that abrupt turn, stopped, exited the vehicle".⁶⁹ DSgt. Roman also admitted that he did not know which way Timothy Epifan had fallen, or where he (Epifan) was going. According to DSgt. Roman, at the point of impact, "I removed my foot from the brake, and what that ended up doing –I slightly, I think I accelerated to get out of the area, was basically one parking spot. It was the distance of one actual parking spot"⁷⁰(my emphasis).

If DSgt. Roman did not know where Timothy Epifan had fallen, or where he was, it did not make sense that he (Roman) would accelerate. DSgt. Roman, in his quest to apprehend Epifan, should have stopped his vehicle immediately. If, as DSgt. Roman maintained, his speed was less than five (5) miles per hour at the time and point of impact, he (Roman) would have been able to stop his vehicle immediately. This would be true, unless DSgt. Roman was traveling fast and/or trying to use his vehicle to apprehend Epifan.

DSgt. Roman made further references to his actions at the time he struck Timothy Epifan:

- a. "I testified earlier that I did remove my foot from the brake once Mr. Epifan had come into contact, ran into the side of the vehicle. I maneuvered away, so yes, I had to remove my foot from the brake, and I maneuvered, I slightly accelerated to get out of the area".⁷¹
- b. "Once I came to a stop, (my emphasis) as I mentioned, I removed my foot from the brake in an attempt to maneuver the vehicle away from Mr. Epifan. Once I take – once I take my foot off the brake, instantaneous as any driver, you go to accelerate. Did I press on the gas or did I move forward? I don't know. I cannot recall that. But that's just common sense".⁷²

D. Fleeing Suspect/Destruction or Evidence vs. the Appropriate Use of Force

The offenses Timothy Epifan committed (prior to his attempt to flee from the police) did not amount to a situation that justified the use of deadly force. Furthermore, the use of a motor vehicle to purposely bring about the apprehension and arrest of Timothy Epifan was not, under any of the circumstances relevant to this matter, justified.

Lieutenant Crater stated that if an officer used his police vehicle to apprehend a fleeing suspect, under these circumstances, it would be an assault. Lieutenant Crater also stated that an officer using his police

⁶⁹ Ibid. Page 135, Lines 3-6.

⁷⁰ Ibid. Page 135, Lines 10-16.

⁷¹ Ibid. Page 143, Lines 3-7

⁷² Ibid. Page 143, Lines 24-25.

vehicle to apprehend a fleeing suspect under these circumstances amounted to the use of deadly force.⁷³ Lieutenant Crater also acknowledged that using a police vehicle to strike a person creates a substantial risk of causing serious bodily harm, and it also creates a substantial risk of death.⁷⁴ Immediately after impact Lieutenant Crater reported that DSgt. Roman caused “a pedestrian struck by a vehicle”.⁷⁵

Although Timothy Epifan was suspected of attempting to destroy evidence that would have shown he illegally recorded a movie, “Bruno”, by depressing buttons on his camera, and discarding his camera during his flight, the use of a motor vehicle to pursue Timothy Epifan in order to preserve any potential evidence is contrary to the Vehicular Pursuit Policy issued by the New Jersey Attorney General.

DSgt. Roman pursued Timothy Epifan in his motor vehicle at the same time, and in the same small space, that Lieutenant Crater was pursuing Epifan in a foot pursuit. After passing Lieutenant Crater, DSgt. Roman struck Timothy Epifan with his vehicle in order to bring about Epifan’s apprehension. DSgt. Roman struck Epifan with his vehicle and dragged him across a portion of the parking lot’s macadam surface before coming to a stop.

Lieutenant Crater was questioned about using a motor vehicle to pursue a suspect fleeing on foot. During his deposition on April 18, 2013, Lieutenant Crater was asked, “–in your career, have you ever used a police vehicle to apprehend a suspect who was fleeing on foot”? Lieutenant Crater responded: “No, sir”.⁷⁶

Lieutenant Crater was also asked, “Would you ever –would your ever expect that you would as a law enforcement official use a police cruiser to apprehend a suspect fleeing on foot? That is, use the car to hit the suspect and disable him”? “– would only use my vehicle to strike someone if it was a deadly force situation”.⁷⁷

Lieutenant Crater clarified his position when he stated, “I would only use my vehicle to strike someone if it was a deadly force situation”.⁷⁸ When he was asked, “Well, do you think that a police vehicle striking a person would tend to create a substantial risk of causing serious bodily harm”? Lieutenant Crater answers “of course”.⁷⁹

⁷³ Lieutenant John Crater Deposition, April 18, 2013. Page 174, Lines 16-20.

⁷⁴ Ibid. Page 42, Line 25, Page 43, Lines 1-9.

⁷⁵ Ibid. Page 67, Lines 18-20.

⁷⁶ Lieutenant John Crater Deposition, April 18, 2013. Page 40, Lines 18-21.

⁷⁷ Ibid. Page 40, Lines 22-24, Page 41, Lines 1-2, 20-22.

⁷⁸ Ibid. Page 41, Lines 20-22.

⁷⁹ Ibid. Page 42, Line 25, Page 43, Line1-3.

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In response to another question, “and also a police vehicle striking a person could also create a substantial risk of death, right? Lieutenant Crater responded, “Yes, sir”.⁸⁰

Lieutenant Crater, DSgt. Roman and Detective Whipple have all agreed that Timothy Epifan did not pose a risk to anyone, nor was anyone else in danger due to the offenses that he was subsequently charged with.

Lieutenant Crater testified he did not know (one way or the other), if DSgt. Roman intended to hit Timothy Epifan with his vehicle in order to apprehend him (Épifan). When Lieutenant Crater was asked if it was DSgt. Roman’s intent to use his vehicle to apprehend Timothy Epifan, Lieutenant Crater responded, “I couldn’t say no”.⁸¹

Lieutenant Crater’s response to a follow-up question, “So that is right that you don’t know, correct, Lieutenant Crater responded “I don’t know the answer”.⁸²

Lieutenant Crater, Detective Whipple, and DSgt. Roman believed that even if Timothy Epifan had been successful in his flight, he still would have been apprehended within a short period of time, if he not been struck by DSgt. Roman’s vehicle.

Lieutenant Crater also believed there was a concern about the destruction of the evidence. In response to the question, “But regardless of all that, in your mind, that risk of destruction of evidence would not justify the use of deadly force in this situation, right?” He responded, “No”.⁸³

Lieutenant Crater was asked if anything occurred, during the overall investigation, which would have justified the use of deadly force to apprehend Timothy Epifan. Lieutenant Crater responded, “From everything I saw and what I felt, the answer is no. (My emphasis) But I should say that at one point when he was running, his right hand was in his cargo shorts pocket. I didn’t feel concerned or threatened by that”.⁸⁴ (My emphasis).

According to Lieutenant Crater, if DSgt. Roman purposely used his vehicle to strike Timothy Epifan then it would be an assault. Conversely, if Epifan ran into DSgt. Roman’s vehicle it would be an accident.⁸⁵

⁸⁰ Ibid. Page 43, Lines 4-7.

⁸¹ Ibid. Page 87, Line 23.

⁸² Ibid. Page 87, Lines 24-25, Page 88, Line 1.

⁸³ Ibid. Page 97, Lines 3-6, 9.

⁸⁴ Ibid. Page 48, Lines 18-22.

⁸⁵ Ibid. Page 130, Line 25, Page 131, Lines 1-5.

Immediately after witnessing the impact Lieutenant Crater was recorded reporting it as “Pedestrian struck by a motor vehicle”.⁸⁶

With respect to the damage to DSgt. Roman’s vehicle (small dent by the fender), Lieutenant Crater did not know if that occurred on the day of the collision, or on another day.

IX. Conclusion

There is no disputing the fact that Timothy Epifan violated the law when he unlawfully, and surreptitiously recorded the movie, “Bruno”, on July 10, 2009 at the Reading Cinema in Manville, New Jersey.

Other facts that are not in dispute are:

1. Timothy Epifan was known by at least one investigator, Det. Whipple;
2. The investigators knew where Timothy Epifan lived;
3. The investigators knew Timothy Epifan did not have a history of violence;
4. According to their depositions, Lieutenant Crater, and DSgt. Roman saw Timothy Epifan throw away his camera during their pursuit of Epifan;
5. The investigators knew that they would be able to apprehend Timothy Epifan within a reasonable amount of time if he (Epifan) was successful in his flight from the police;
6. The law enforcement officers were trained, and re-trained, in the Use of Force and Vehicular Pursuit;
7. DSgt. Roman was trained in June 2001, in Internal Affairs Policies and Procedures;
8. Lieutenant Crater agreed that the Manville Police Department Rules and Regulations, regarding the Use of Force, Vehicular Pursuit and Internal Affairs Investigations, are consistent with the policies set forth by the New Jersey Attorney General;
9. DSgt. Roman agreed that his agency’s rules and regulations regarding the Use of Force, Vehicular Pursuit and Internal Affairs Investigations, are consistent with the policies established by the New Jersey Attorney General;
10. DSgt. Roman used his vehicle to strike Timothy Epifan during an unjustified vehicular pursuit;
11. The investigators, Crater and Roman, agreed that there was not an internal affairs investigation into the collision.

Based upon all of the evidence available in this matter the questions listed below must be answered:

⁸⁶ Ibid. Page 67, Lines 18-20.

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1. Was there a legitimate reason to pursue Timothy Epifan?
2. Was there a legitimate reason to use a motor vehicle in the pursuit of a person fleeing on foot?
3. How fast was the pursuing motor vehicle traveling at the time of the collision?
4. Was the force used to apprehend Timothy Epifan deadly force?
5. Was DSgt. Roman's tale of the overall incident consistent with the physical and photographic evidence?
6. Did the violations, committed by Timothy Epifan, call for the deadly use of force in his apprehension?

If Timothy Epifan had been successful in his attempt to flee the law enforcement officers, the investigators knew where Timothy Epifan lived, and that he did not have a history of violence, and that he would be apprehended within a reasonable amount of time.

It was also a well known fact by the pursuing officers that Timothy Epifan had discarded the potential evidence, and that the evidence, the camera, had been or would be immediately recovered by the officers. These facts alone, or collectively, should have alerted the officers that any further pursuit of Timothy Epifan was not necessary.

If the pursuit had been terminated, especially by DSgt. Roman, when the evidence (camera) was discarded by Timothy Epifan, there would have been no reason to employ any degree of force when he was apprehended. Furthermore, an internal affairs investigation into the use of force would not have been necessary. However, an internal affairs investigation would have been necessary regarding the vehicular pursuit of a suspect fleeing on foot.

There was no legitimate reason for DSgt. Roman to use a motor vehicle in his pursuit of Timothy Epifan. DSgt. Roman violated the Attorney General's Guidelines for Vehicular Pursuit, and in doing so violated his agency's rules and regulations.

DSgt. Roman maintained that at the time of the collision with Timothy Epifan, he (Roman) was traveling at a rate of less than five (5) miles per hour. Based on the report submitted by Dr. Wayne Nolte, the medical opinion of Dr. Markbreiter, and the physical evidence, as well as common sense, this assertion is absolutely not true.

DSgt. Roman's statements that, Timothy Epifan ran into the front right side panel of his vehicle, are also incorrect. Dr. Nolte has shown that it was not possible for the collision to have occurred the way DSgt. Roman described it.

Of particular interest in DSgt. Roman's tale regarding the collision is the fact that at the time of the collision, (less than five (5) miles per hour), he was braking, he took his foot off of the brake and then he accelerated in order to avoid Timothy Epifan. The physical evidence, the examination of the physical

evidence, and photographic evidence do not support DSgt. Roman. The opposite is true. The physical evidence and photographic evidence show DSgt. Roman's story to be false.

Dsgt. Roman's denial of dragging Timothy Epifan at the time of, and following the impact, is not substantiated by the evidence. Again, the opposite is true. The physical and photographic evidence show that Timothy Epifan was dragged after impact. Dr. Markbreiter discusses this in his report.

The evidence documents that Timothy Epifan was struck from behind by a vehicle traveling between twenty-two (22) and twenty-five (25) miles per hour, not five (5) miles per hour.

DSgt. Roman has asserted that he was applying his brakes at the point and time of impact. Dr. Nolte's examination and analysis of the evidence shows that the speed of DSgt. Roman's vehicle, at the time and point of impact, was twenty-two (22) and twenty-five (25) miles per hour. Based on Dr. Nolte's examination and analysis, it would seem reasonable that DSgt. Roman's pursuit speed was excessive.

Using a motor vehicle, to relentlessly pursue a person fleeing on foot, in a small space, ("a really tight spot",⁸⁷ "it was a real narrow travel on both sides – there's a curb"⁸⁸), at an excessive rate of speed, solely to apprehend the fleeing person, employed deadly force.

DSgt. Roman's disregard for his training, disregard of the guidelines for vehicle pursuit, and use of force for crimes, that were not of the first, or second degree, is a clear indication of an intentional act.

The mall parking lot, (even with a minimum number of vehicles, and pedestrians, and a high voltage fence nearby), was not conducive to safely pursue someone with a motor vehicle. The dangers to the other officers, pedestrians, and the suspect, far outweighed the necessity for immediate apprehension. Initiating a vehicular pursuit of a person fleeing on foot constituted a complete disregard for the safety of anyone in the area.

DSgt. Roman made it clear that he did not consider his actions to be a pursuit. Yet when asked if he was "chasing him", DSgt. Roman responded, "well yes".⁸⁹ Another reference to DSgt. Roman's "pursuit" of Epifan can be found when he states, "Once we were in the pursuit and I hit the corner all I saw was the back end of one of the Manville vehicles going..."⁹⁰

DSgt. Roman admits that his top speed was, plus or minus, twenty-five (25) miles per hour. He justifies his answer by referencing it to a residential area or school zone.

⁸⁷ Francisco Roman Deposition, April 23, 2013. Page 130, Lines 2-9.

⁸⁸ Ibid. Page 131, Lines 2-4.

⁸⁹ Ibid. Page 148, Line 25.

⁹⁰ Francisco Roman Deposition, June 18, 2013. Page 190, Lines 5-9.

In the same breath that DSgt. Roman was talking about his top speed being a plus or minus twenty-five (25) miles per hour, referencing a residential area or school zone, he states, "That seems to be a safe speed, --that seems to be a relatively safe assumption".⁹¹ It seems to me that DSgt. Roman focused on a speed he believed would be acceptable, and a "safe speed, a relatively safe assumption", rather than his actual top speed.

It is important to recall that immediately prior to impact, DSgt. Roman admits that Timothy Epifan had raised his hands. This is certainly a recognized sign of surrender. Why then, if as DSgt. Roman states, he was traveling at a rate of less than five (5) miles per hour, applying his brakes, does he not simply bring his (Roman) vehicle to a complete stop. The evidence shows DSgt. Roman did not stop because he was not applying his brakes, but rather using his vehicle to apprehend Timothy Epifan.

Upon reviewing Ms. Kathleen Hille's January 15, 2013 deposition, she states that in a conversation with Officer John Granahan, of the Manville Police Department, he (Granahan) told her that Timothy Epifan had raised his hands after he stopped fleeing, immediately before he was struck by DSgt. Roman.

Photographic evidence, DNA report, Dr. Markbreiter's report, and Dr. Nolte's Expert Report, show a direct connection between the drag mark, and the DNA evidence to the pool of blood where Timothy Epifan ended up after his body became free from DSgt. Roman's vehicle.

The failure by the Manville Police Department, and the SCPO to investigate the collision between DSgt. Roman's vehicle and Timothy Epifan violates a July 2009 revision to the Vehicular Pursuit Policy. The revision states, "The revision also directs law enforcement agencies to investigate all collisions involving a law enforcement vehicle to determine whether the accident could have been prevented".⁹²

The same guideline states, "a pursuing officer shall terminate the pursuit if the officer believes the danger to the pursuing officer or the public outweighs the necessity for immediate apprehension, or the identity of the person being pursued is established to the point where later apprehension may be accomplished and where there is no immediate threat to the safety of the public or police officer".⁹³

There is a requirement in the Vehicular Pursuit Policy (Attorney General – July 2009) that "directs law enforcement agencies to investigate all collisions involving a law enforcement vehicle to determine if the accident could have been avoided".⁹⁴ (My emphasis)

⁹¹ Francisco Roman Deposition, April 23, 2013. Page 130, Lines 11-14.

⁹² New Jersey Attorney General Vehicular Pursuit Policy, July 2009. Page 1, Paragraph 4.

⁹³ Ibid. Section C-Terminating the pursuit, Sub-Section 1b&c.

⁹⁴ Ibid. Page 1, Paragraph 4.

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There is also a requirement in the New Jersey Attorney General Guidelines for Internal Affairs Investigations that a thorough and objective investigation be conducted in situations where, among others, excessive force has been used, or a crime (assault), has been committed.⁹⁵

Despite these mandatory requirements, the SCPO did not conduct any sort of investigation into DSgt. Roman's actions.

The Manville Police Department, although restricted in their ability to conduct their own internal affairs investigation into DSgt. Roman's actions, nevertheless, should have requested such an investigation be undertaken by the SCPO. They never requested an investigation.

In summary, the risks involved in the pursuit of Timothy Epifan by DSgt. Roman were excessive, and dangerous to the public, the suspect, and the police officers. The use of a motor vehicle to apprehend Timothy Epifan was in fact an unjustified use of deadly force.

DSgt. Roman knew that the manner in which he operated his vehicle, solely to apprehend and arrest Timothy Epifan, purposely caused, and created a substantial risk of causing death or serious bodily harm. In this case, Timothy Epifan was seriously injured.

Dsgt. Roman knew there was an alternative to the use of deadly force. There was absolutely no reason to employ force in the apprehension and arrest of Timothy Epifan. DSgt. Roman could have achieved the lawful apprehension and arrest of Timothy Epifan at no increased risk to himself, other officers, or Timothy Epifan. Instead, DSgt. Roman resorted to using deadly force.

William C. Wilks

⁹⁵ New Jersey Attorney General Guidelines for Internal Affairs Investigations. Page 8, Paragraph 3, Page 27, Paragraph 1.