

The San Bernardino County Sentinel

News of Note
from Around the
Largest County
in the Lower
48 States

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Specter Of Evidence Tampering In Opmanis Crestline Shooting Prosecution

By Sherry Elshaug
and Mark Gutglueck

Evidence that was to be used in the prosecution of Alex Opmanis on murder charges in the July 11, 2019 shooting death of Sammy Davis appears to have been altered. As the evidence tampering was looming into focus this week, a preliminary hearing on the matter that was scheduled for yesterday,

January 16, was abruptly postponed until January 27.

The evidence in question consists of a security video that captured moving images and the sounds of the shooting, as well as activity in the area where the shooting occurred both before and after the fatal encounter. It is unclear who made the deletions of multiple passages of footage on

the version of the video being provided and exhibited by the district attorney's office, including a crucial 12 seconds that is missing just prior to the shooting. The action remaining on the video just prior to the excised portion shows what appears to be Davis initiating an assault on Opmanis after Davis and two of his associates have dismounted from

their motorcycles and are encircling Opmanis standing next to his vehicle. At that point there is a 12-second excision from the video. Upon resumption, Davis and Opmanis are fully engaged in a scuffle, and less than two seconds later Opmanis is seen and heard discharging two rounds from a handgun he has managed to remove from his vehicle, one of which

hit Davis, who collapses immediately.

The missing video footage, which would potentially shore up Opmanis' legal position as he fights the charges against him with the assertion he was engaged in justifiable self-defense, represents the third twist in a case that generated immediate attention not only in the San Bernardino See P 5

Judge's Consideration & Denial

By Mark Gutglueck

The much-anticipated sentencing of Charles "Chase" Merritt that was to take place today was delayed until next Tuesday, as the sole remaining member of his legal team put on a tour de force in the form of a set of legal motions intended to rescue his client from eventual execution which was carried out

under the most exacting of circumstances, not the least of which was Merritt's effort in the midst of the proceedings to have him terminated as his counsel.

Ultimately, the effort by defense attorney Raj Maline to have the judge who heard the case, Michael A. Smith, make a determination that Merritt's nearly six-month-

long trial last year was marred by prosecutorial misconduct and the ineffective assistance of counsel provided to the defendant by Maline's former law partner failed, and Judge Smith refused to grant Maline's motion that Merritt be granted a new trial.

The day had dawned with the victims' survivors, the defendant's

family members, prosecutors, Merritt himself and his defense team and the rest of the world anxiously awaiting word on whether Judge Smith would confirm the death penalty recommended by the jury or impose instead a sentence of life without the possibility of parole on the 62-year-old seven months after he was convicted of the

2010 murders of all four members of the McStay family. That anxiety was ultimately extended to next week as the hearings on Maline's two defense motions and then the mind-bending request by Merritt to fire the individual who represents the last impediment between him and the death chamber ate up most of the day. See P 2

January 15 SB City Council Agenda Studded With Signs Of Valdivia Graft Entanglements

A heavily-laden agenda considered by the San Bernardino City Council this week after that body had not met in a regular session for almost a month contained four items that involved issues relating to past or current questionable activity on Mayor John Valdivia's part, including quid pro quo which have caught the attention of federal and local investigators who are now

angling to determine if Valdivia has been provided with bribes or kickbacks intended to influence city policies.

The council last met on December 18. Its previously scheduled January 2 meeting was canceled. As a consequence, the council was confronted on Wednesday night with 34 action items in its open session commencing at 7 p.m and during its earlier

closed session that was not open to the public during which it conferred with senior staff and the city attorney with regard to 16 current or potential lawsuits against the city.

Among the action items on the agenda was one, designated as number 6, which authorized the city to issue a 10-day notice of termination to the firm the city employs to lobby federal See P 15

Overcoming State Delay, 29 Palms At Last Breaks Ground On Project Phoenix

The City of Twenty-nine Palms on Thursday broke ground on the first phase of Project Phoenix, its redevelopment project for the city's downtown district that has been delayed for nearly a decade,

Project Phoenix was nearly choked out of existence by the State of California's move more than eight years ago to close out local redevelopment

agencies. Because of the city's commitment to the concept of rejuvenating its civic core, the fact that the effort was under way before the State of California took its redevelopment agency-killing action and the city's willingness to litigate in the face of the State's far greater resources and application of its authority, the project survived.

Project Phoenix was

conceived as an undertaking by the Twenty-nine Palms Redevelopment Agency aimed at constructing a community center, a 250-seat theater, classrooms, a civic plaza, a park, a paseo, residential units, a wastewater treatment plant, and improvements to the downtown fire station. The project was put in jeopardy in 2011, however, when the leg-

islature passed AB XI 26 and AB XI 27, which shuttered more than 400 municipal and county redevelopment agencies up and down the state. The state sought to reroute redevelopment money to law enforcement and education efforts in that closure. Twentynine Palms, however, intrepidly pushed ahead with the project, based upon Twentynine Palms City Attorney A. Patrick Muñoz's assertion that the project had been initiated prior to AB XI 26 and AB XI 27 going into effect. According to Muñoz, the state law ending redevelopment function is trumped by federal securities regulations, meaning the money the Twentynine Palms Redevelopment Agency bonded for in See P 15

Cannabis Trade Conflicts Impact Council Fill-In Selection

The proliferation of marijuana dispensaries and a consequential and incidental circumstance of conflict in San Bernardino County's smallest city became a factor in the determination of whom the city council settled on this week to fill out the vacancy within its ranks following the December 10 resignation of Clayton Hazlewood.

Hazlewood's abrupt and unexplained departure left the council in something of a lurch. He had lodged a letter of resignation with the city just prior to its meeting on December 10. As it turned out, that day illness had felled Mayor Jeff Williams and Councilman Zachery Longacre. The council consists of seven members total, six councilors and the mayor. The mayor, who serves as the panel's presiding officer, is not empowered to vote under normal circumstances. Given that Councilman Ed Paget, as vice mayor, would have needed to fill in as the presiding officer, the remaining voting members of the council – Tim Terral, Tona Belt, and Shawn Groundsmen – were not sufficient in number to form the four-member quorum needed to make legally binding decisions for the city, and the meeting was adjourned until December 17, at which point the December 10 agenda was taken up, together with the addition of an item relating to accepting Hazlewood's resignation. On December 17, the council made formal acceptance of Hazlewood's departure and set the meeting of January 14 as the date upon which they would consider and design- See P 3

**Defense Motions
Delay Merritt's
Sentencing As Judge
Gives Encapsulation
Of The Six-Month
Murder Trial & His
Reading Of The
Evidence from front
page**

In the course of the proceedings, Judge Smith made a finding that the jury had a sufficient factual foundation based upon the evidence presented at trial to back up the guilty verdict it had rendered in the case. Even more pointedly, Judge Smith stated that he, in the role of the "13th juror" necessitated by his acting as the arbiter of the motion for a new trial, was himself convinced beyond a reasonable doubt that Merritt was guilty of the murders.

The proceedings kept the rapt spectators packed into the San Bernardino Justice Center's largest courtroom in place until after the normal 5 o'clock closing of the courthouse. At that point Judge Smith, against the wishes of multiple attendees who in a departure from the decorum that normally attends the courtroom atmosphere had made open and shouted declarations that they were prepared to remain within the premises at least until 10 p.m so that the sentencing could be carried out, adjourned the hearing until Tuesday morning, January 21 at 8:30 a.m. While the official fate of Merritt will not be known until what is anticipated to be a few hours after that, there were indications that suggest Judge Smith is leaning toward confirming the jury's finding that the imposition of the death penalty is appropriate.

On June 10, 2019, the jury hearing the allegations of murder against Merritt found him guilty on four counts of first degree murder in the February 2010 killings of Joseph McStay, his wife, Summer, and their two children, four-year-old Gianni and three-

year-old Joseph Jr. The jury made an additional finding of special circumstances, specifically the commission of multiple homicides, which opened the way for the potential application of the death penalty against Merritt.

The prosecution team, consisting of lead prosecutor Supervising Deputy District Attorney Britt Imes as well as Supervising Deputy District Attorney Sean Daugherty and Deputy District Attorney Melissa Rodriguez, alleged that Joseph McStay, displeased with the quality of Merritt's work and convinced that Merritt was embezzling from the company McStay owned, Earth Inspired Products, in early 2010 was purposed to terminate Merritt as the primary manufacturer of Earth Inspired Products' line of goods, large scale water features, primarily fountains and decorative artificial waterfalls. Prosecutors convinced the jury that Merritt, motivated by greed and anger over the imminent loss of gainful employment his firing would entail, after a meeting with Joseph McStay on the afternoon of February 4, 2010 in which McStay confronted him about the embezzlements, that evening drove to the McStay family home in Fallbrook where he bludgeoned them with a three-pound sledge hammer. The prosecution then asserted and the jury accepted that Merritt then took the family's corpses to the desert area between Victorville and Oro Grande where in a wash off a rarely-used dirt road used for utility facility maintenance he interred them in two shallow graves on February 6, 2010, and two days thereafter, on February 8, 2010 ditched the McStay family's vehicle, a 1996 Isuzu Trooper, in a shopping mall parking lot a half mile away from the Mexican border in San Ysidro, action by which he intended to mislead investigators into thinking the family had fled south of the border.

Merritt was arrested in November 2014, one year after the family's remains had been found in and strewn about the desert gravesite after animals had disinterred the body of the youngest child, Joseph McStay, Jr., and the three-year-old's skull cap had been found by a motorcyclist who came across it while riding in the desert on Memorial Day 2013.

Merritt had remained in custody for four years, during which time he had twice fired his court-appointed attorneys while endeavoring to represent himself. At last he accepted the services of Raj Maline, whose reputation as a dedicated and passionate defense attorney precedes him, and those of James McGee, a longtime prosecutor, who only relatively shortly before had gone into the private practice of criminal law, as well as McGee's partner Jacob Guerard. After jury selection in late 2018, Merritt's trial commenced in January 2019.

During the prosecution's phase of the trial, Imes, Daugherty and Rodriguez, utilizing information compiled by investigators with both the San Diego County and San Bernardino County sheriffs' departments, connected Merritt to events and circumstances relating to what they characterized as troubled business dealings with Joseph McStay and the events seemingly relating to the family's demise.

Through a series of speculative assertions that resonated with the jury, the prosecution team assembled a circumstantial case against Merritt. That case consisted of cell phone records which showed that on February 4 between 5:48 p.m. and 9:32 p.m., which corresponded to the timeframe during which the prosecution claims the murders took place, Merritt's cell phone had been turned off, masking his whereabouts. The prosecution used those cell phone records to further demonstrate that on February 6, 2010, Merritt or whoever

was in possession of his phone was somewhere in the 240-square mile environs of the Victor Valley, an indication he was at the grave site that day, disposing of the bodies. Perhaps the strongest evidence against Merritt put on by the prosecution consisted of a series of checks totaling more than \$20,000 on the account for Joseph McStay's business, Earth Inspired Products, that Merritt had apparently written to himself in the days just prior to, the day of and over the four days following the family's disappearance. The prosecution maintained that Merritt had first stolen from Joseph McStay out of financial desperation brought on in part because of his gambling addiction, and that he then murdered McStay and his family after his thefts were discovered to cover up his larceny and prevent Joseph McStay from reporting it to law enforcement authorities.

Those checks embodied certain specific anomalies, such as an atypical lack of capitalization in the names of the payees to whom the checks were made out or in the checks' memo lines, as well as all of those checks drafted after the family's disappearance being backdated to February 4, 2010. Based upon those differences in the way Joseph McStay drafted the checks written against the Earth Inspired Account, the prosecution asserted that Merritt had been engaged in embezzlement from the company. When Joseph became aware that Merritt was pilfering from the company, the prosecution alleged, it precipitated the February 4 confrontation between McStay and Merritt that occurred at a Chick-fil-A fast food restaurant in Rancho Cucamonga not too distant from the apartment complex Merritt lived in with his family.

The prosecution maintained that Merritt had driven from his home in Rancho Cucamonga to Fallbrook the night of February 4 to carry out the mur-

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ders, relying upon gaps in Merritt's cellphone activity that night and brief and grainy footage from the front yard security video camera of one of the McStay family's neighbors on Avocado Vista Lane, Jennifer Mitchley, showing the lower portion of a vehicle, at 7:47 pm, pulling out of the McStay family driveway, to support that claim. The prosecution adamantly claimed the vehicle was Merritt's work truck, while the prosecution's own original expert witness on the matter, Dr. Leonid Rudin, considered to be one of the world's leading photogrammetrists, and the expert for the defense, Gregg Stuchman, said there were features of both vehicles that conclusively demonstrated the vehicles could not have been one and the same. The prosecution then jettisoned Rudin as its expert witness and went across the international border to Canada to bring in a second measurement-and-photographic-analysis-and-comparison expert, University of Toronto professor Eugene Liscio, to state that he could not rule out the possibility that it was Merritt's truck depicted on the security video.

Merritt was scheduled to be sentenced by Judge Michael A. Smith, who had presided over the trial, in September. Under the law, Smith's only sentencing options are to confirm the jury's recommendation or to substitute, in the case of the murders of Summer, Gianni and Joseph, Jr., life in prison with no possibility of parole for the jury's death penalty recommendation. By September, even though Maline, McGee and Guerard were assiduously maintaining the innocence of their client, the relationship between Merritt and McGee had soured, largely because of disagreements Merritt had with McGee over how the defense had chosen to contest the allegations of the prosecution relating to the cell phone data and how it had allegedly placed him proximate to the

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Adelanto Jettisons Its Crime Free Housing Program from front page

ria the previous year, despite indications that the Hesperia initiative was under challenge. The 2017 Adelanto City Council - which counted Mayor Rich Kerr and councilmen Ed Camargo, John Woodard, Charles Glasper and Jermaine Wright among its members – adopted an ordinance virtually indistinguishable from the Hesperia law.

The Hesperia regulations that went into effect with the dawn of 2016 made it mandatory that all property owners within the city limits of Hesperia participate in the crime free rental housing program.

In essence the program required all rental property owners to evict tenants upon notice by the sheriff's department that those tenants had engaged in any alleged criminal activity on or near the property. Although the ordinance purported to target "criminal activity," the sheriff's department no-

tified landlords to begin evictions of entire families – including children – for conduct involving one tenant or even non-tenants. The sheriff's department also pushed rental owners to carry out evictions of victims of domestic violence, and evictions based on mere allegations and without evidence of criminal activity, according to the American Civil Liberties Union, the Department of Housing and Urban Development and ultimately the U.S. Justice Department.

In short order, complaints about the intent, purpose and effect of the Hesperia ordinance were being heard and the American Civil Liberties Union and the Victor Valley Family Resource Center filed suit targeting it. In 2017, in response to the American Civil Liberties Union/Victor Valley Family Resource Center's legal action, effective July 18, 2017 the City of Hesperia dropped the requirement that all rental property owners take part in the program's regulations and restrictions, making those voluntary. That, however, did not

undo those elements of the ordinance that federal officials maintain are unconstitutional and which have allegedly been unevenly applied to target Latino and African-American residents for removal from the community.

The ordinance remained in place throughout 2017, and into 2018 and 2019. During that time, one of the members of the city council, Russ Blewett, who was serving as the council-appointed mayor at the time, died in May 2018.

Previously, the then-mayor and one of the councilmen who had voted to put the Crime Free Housing Program into place in 2015, Eric Schmidt and Mike Leonard, had left office. In 2018, another councilman, Paul Russ, was voted out of office. That left last year and at present only one member of the council who had approved the ordinance yet in office, Bill Holland. Still the same, the ordinance remained in force. Moreover, the prime mover in the formulation of program had been Sheriff's Captain Nils Bentsen, who was serv-

ing as Hesperia's police chief at the time, as Hesperia contracts with the San Bernardino County Sheriff's Department for law enforcement services. Bentsen has subsequently retired from the sheriff's department and is now serving in the capacity of Hesperia city manager. No one in Hesperia was disposed toward acknowledging any problem with the program.

In October 2019, the U.S. Department of Housing and Urban Development [HUD] lodged a complaint alleging Hesperia's program violated the Fair Housing Act by discriminating against African-American and Hispanic residents. When the city did not act with alacrity in response to the HUD complaint, the United States Justice Department on December 2, 2019 filed a civil lawsuit alleging both the City of Hesperia and the San Bernardino County Sheriff's Department in pursuing the program discriminated against African American and Latino renters in violation of the Fair Housing Act.

The names of both William P. Barr, the U.S. Attorney General, and Eric S. Dreiband, the Assistant U.S. Attorney General, appeared on the suit, as did that of Sameena Shina Majeed, the chief of the office's Housing and Civil Enforcement Section, and the section's deputy chief, R. Tamar Hagler. Also listed as representing the government were Nicola T. Hanna, the United States Attorney in Los Angeles, and David M. Harris, the chief of the civil division in Los Angeles, Karen P. Ruckert, the chief of the Los Angeles Office's Civil Rights Section, and Matthew Nickell, the head of the civil division within the Los Angeles office's Civil Rights Section.

The suit states "The city—with substantial support from the sheriff's department—enacted the mandatory eviction ordinance to address a perceived 'demographical problem': the growing population of African American and Latino renters in Hesperia. The African American and Latino population in Hesperia grew rapidly in the late 20th and early 21st centuries while the percentage of non-Hispanic white residents declined. In 1990, non-Hispanic white residents were 76.8 percent of the city's population, but by 2000, this had dropped

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Conflict Reduces Needles' Council Replacement Options from front page

nate who would serve out the remaining time on Hazlewood's term.

Former Needles City Councilwoman Louise Evans, former Needles Councilwoman Ruth Musser-Lopez, Kirsten Carol Merritt, Shawn O'Brion, Robert Savant and Gerald "Jerry" Telles made application for the appointment.

Some had suggested that the council in making its selection should consider as a controlling factor the election results when Hazlewood had run successfully for the city council in 2016. In that race in which three positions were at stake, nine candidates had competed, with Belt finishing first with 583 votes or 16.93 percent, Gudmundson claiming

515 votes or 14.96 percent for second place and Hazlewood capturing third place with 484 votes or 14.06 percent. Finishing fourth had been Telles, with 431 percent or 12.52 percent, followed by Linda Kidd in fifth place with 398 votes or 11.56 percent and Musser-Lopez in sixth place with 350 votes or 10.17 percent. Finishing seventh, eighth and ninth in that race were, respectively, Tom Darcy, Tim Terral and John H. Wagner. The public consideration and discussion of that suggestion convinced Musser-Lopez to throw her support behind Telles. When the council met this week, on Tuesday, January 14, Musser-Lopez came forth to voice her belief that Telles, by virtue of his being the strongest finisher in the 2016 race behind Hazlewood now in the running, rendered him the logical choice to move into the council position and therefore

merited him the appointment.

The council, however, dwelt at some length on the employer-employee relationship between Telles and Longacre. Longacre, who is a bartender, has a second job during daylight hours working at the marijuana dispensary in Needles owned by Telles.

On November 6, 2012, voters in Needles approved the adoption of Measure S, a marijuana business tax ordinance and authorizing the operation of medical marijuana dispensaries and the collection of a marijuana business tax of up to 10 percent of gross receipts. In December 2012, the Needles City Council set the marijuana business tax at the maximum 10 percent. Thereafter, a number of entrepreneurs began transacting business as marijuana purveyors in Needles, putting the city at the forefront of San Bernardino County cit-

ies with respect to allowing the sale of medical marijuana. In this way, Needles was positioned to get in on the ground floor of the social revolution brought about with the 2016 statewide passage of Proposition 64, The Adult Use of Marijuana Act, which made the use of marijuana for intoxicative effect legal and empowered cities to allow the sale of the drug for recreational purposes to take place.

Before that occurred, however, in December 2014, with prospective marijuana operation applicants threatening to burgeon into the dozens, the city drew the line on the number of dispensaries it would allow, restricting the number to the five then functioning with fully legal permits.

Along with Adelanto, the one other city in San Bernardino County that liberalized its stance with regard to the sale of marijuana prior to 2016, Needles got in on

the ground floor of the California marijuana boom. As such, the city council is in the position of making decisions on a frequent basis that have a potential impact on the business prospects of the city's various marijuana-based operations.

There are circumstances which complicate this consideration. Mayor Williams' brother works for one of the dispensaries established in the city. At one point, Councilman Terral's wife was offered a job with one of the city's dispensaries, but in the end, she elected not to go to work there because of the suggestion this would entail a conflict on her husband's part whenever issues relating to cannabis commercial activity came before the city council.

Given Telles's direct connection to the marijuana industry and the consideration that one of his employees, Longacre, who captured third place with 491 votes or 18.72 percent.

member of the council, the council as a whole on Tuesday decided to bypass Telles as a council candidate. The potential of conflict by having Telles and Longacre on the council, both because of their employer/employee relationship and their involvement in the marijuana sales business, was cited at the justification for rejecting Telles's application.

The council instead voted to elevate Louise Evans to the council. In the 2018 Needles municipal election involving five candidates vying for three positions, Evans had finished fourth, with 486 votes or 18.56 percent. She was outdistanced by Paget, in first with 700 votes or 26.69 percent; Terral in second with 507 votes or 19.33 percent; and Longacre, who captured third place with 491 votes or 18.72 percent.

-Mark Gutglueck

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FBI Agent & Prosecution Misrepresented The Sense & Substance Of Merritt's Cell Phone Data, Maline Asserts from page 2

gravesite on February 6 as well as putting him in transit from the McStay home to his own home in Rancho Cucamonga on the evening of February 4 and in the late morning of February 8, times when the prosecution alleged Merritt was murdering the family and returning from having abandoned the Isuzu Trooper near the U.S./Mexico border. McGee and his partner Guerard consequently sought to be relieved as Merritt's counsel, which entailed a delay in sentencing while Judge Smith considered the matter. Ultimately, Judge Smith in November allowed McGee and Guerard to substitute out. Thus, representing Merritt at his sentencing today fell exclusively to Maline, who first sought a further delay to allow him to prepare motions or writs with regard to the pending sentencing or in request of a vacating of the jury verdict and a retrial. After Judge Smith denied the extension request, Maline prepared one motion to be considered by Judge Smith today that was filed in a timely manner and then a second motion that was not lodged with the court until this morning.

One of those motions was a petition for a new trial. Another was one

seeking a ruling from Judge Smith that Merritt's defense had been hampered by ineffectiveness of counsel on McGee's part, particularly as related to the inadequate controversion of the prosecution's allegations relating to Merritt's cell phone records which were used against Merritt at his trial.

A delay in the day's proceedings, which were scheduled to begin at 8:30 a.m., ensued while Judge Smith, who agreed to consider Maline's motion filed that morning despite it not being filed in a timely manner, remained in his chambers to read the 91-page brief that accompanied it.

Once Judge Smith took his place on the bench, he permitted Maline to make an oral presentation of the material contained in his motions and their accompanying briefs. Judge Smith did not, however, allow Maline to put the defense's cell phone technology expert, Vlad Jovanovic, on the witness stand to testify. Nor did Judge Smith allow Jovanovic to make a PowerPoint presentation he had prepared relating to the cell phone records, cell tower placement and what he considered to be the prosecution's misinterpretation of the evidence which was presented to convince the jury of Merritt's presence at several places critical to the prosecution's case. Though Jovanovic was on the defense's witness list, during the trial McGee had elected not to call Jovanovic as a witness because he believed

he had successfully refuted the prosecution's assertions relating to Merritt's location at critical times within the prosecution's narrative through his cross examination of the prosecution's cell phone data expert, FBI Agent Kevin Boles. Judge Smith said he would not indulge Maline by allowing him to question Jovanovic at this point as part of today's hearings, but would allow Maline to submit Jovanovic's PowerPoint presentation and other documentation he had provided relating to his analysis of the cell phone data into the record of the proceedings, which is likely to prove of significance during the inevitable appeal of the conviction that is to follow.

In the presentation Judge Smith allowed him to undertake, Maline on behalf of Merritt asserted that the cell phone data did not place his client near the gravesite on February 6, 2010 as the prosecution had alleged. The most compelling element of the prosecution's case, indeed the only evidence tying Merritt to the murders of the family, Maline asserted, was what amounted to a falsified or misrepresented interpretation of Merritt's cell phone pinging off the Quartzite Mountain cell tower, which is located 1.92 miles west from the gravesite. "That was pretty powerful evidence," Maline said in sizing up the degree to which the assertion that the cell phone data placing Merritt at

the gravesite on February 6 furthered the prosecution's case. But that "powerful evidence," Maline said, was a chimera that more exacting scientific analysis of the sort that Jovanovic had carried out would reveal as false and inaccurate. In actuality, Maline said, a determination of the direction of communication between the tower and Merritt's cell phone placed Merritt in a sector that was north or northeast of the tower, which corresponded to the residence of Merritt's sister, Juanita, who lived just off the National Trails Highway near Oro Grande, rather than placing him at the gravesite, which was east of the cell tower. During his interrogations by sheriff's department detectives in 2014, Merritt had insisted he had either not been in the High Desert on February 6, 2010 or had no recollection of being there, and that if he was in the High Desert on that day or anytime in the 2009 and 2010 time period, then it was to visit his brother who lived in Hesperia or his sister who lived in Oro Grande. A more accurate interpretation of the cell phone data and Merritt's consistent insistence that if he was in the area north of Victorville it had been to see and take care of his sister, who was infirm at that time, significantly undercuts the prosecution's case, Maline told Judge Smith.

Maline said the prosecution had misled the jury as to the meaning of the evidence by ignoring that the calls

made from Merritt's cell phone that day had initially locked onto the Quartzite Mountain cellular tower, which is located on prominent high ground at an elevation of 4,522 feet, but that the calls were then transferred over to cell towers in the Victor Valley or High Desert area other than the one on Quartzite Mountain before they concluded. The direct line-of-sight the Quartzite Mountain tower has to virtually every spot within its 240-square mile coverage area, Maline suggested, explains why Merritt's phone initially locked onto it. Moreover, Maline asserted, Agent Boles, as a member of the FBI, had access to a national cell tower data base that he had not disclosed in his testimony or the documentation he prepared to augment his testimony, and the prosecution withheld that data from the defense, which constituted prosecutorial misconduct in that exculpatory evidence had not been provided to Maline, McGee and Guerard at the time of the trial. Neither was it disclosed to the defense that the cell towers had six rather than three antenna, which, Maline suggested, reduced their sectors of coverage by half, and that this supported the proposition, given the antenna that Merritt's cell phone had linked up with, that he was not east of the tower at or proximate to the gravesite on February 6, 2010, based upon the available cell phone data as the prosecution had

implied.

Maline further maintained that there were malfunctions of the cell phone and cell tower equipment and errors in the recording of cellular phone data that lent themselves to further misinterpretation that were unjustly used to convict his client. The prosecution's assertion that Merritt's cellphone making contact with the Quartzite Mountain cell tower was something the jurors "could sink their teeth into" to assume his client was at the grave site and assign guilt to him, Maline said, but a more logical and accurate interpretation of that evidence was that Merritt was "northbound on the 15 Freeway," which was a route to his sister's home, the lawyer said.

"The jury never had a chance to hear that there is good explanation to Mr. Merritt hitting those towers, which was consistent with what Mr. Merritt was saying all along," Maline said, namely that he was visiting his sister at the time.

Testimony presented by FBI Agent Kevin Boles relating to a connection between Merritt's cell phone and a tower along the I-15 Freeway between 1 p.m. and 2 p.m. on February 8, 2010 was used by the prosecution to suggest that earlier that day Merritt had been in San Ysidro where he left the McStay family's Isuzu Trooper near the international border, Maline said. Boles' testimony in that regard also lent

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Murder Case Defendant Was Beaten Severely By Dead Man's Associate 6 Months Prior To Shooting from page 2

Mountain district, where the motorcycle gang Davis is a part of and the methamphetamine culture with which it is intertwined has for some time put the community on edge, but throughout San Bernardino County and the rest of Southern California, as well.

Initially, the agency that investigated the shooting, the San Bernardino County Sheriff's Department, which had access to the full unedited and unaltered video,

made a determination that Opmanis had acted in self-defense. While the self-defense justification rang true with many of those in the immediate vicinity of the incident who were familiar with the personalities and proclivities of Davis and his associates, to the public at large in the valley below the San Bernardino Mountains extending toward the Los Angeles Basin, that Opmanis, or anyone for that matter, could walk away from a shooting growing out of an apparently heated confrontation was somewhat alarming and baffling.

Four weeks later, the sheriff's department reversed course, arresting Opmanis on suspicion of

murder, simultaneously reporting that its investigators had detected certain inconsistencies in Opmanis's statements with regard to the shooting and what led up to it.

The events which triggered the July 11, 2019 shooting go back more than six months prior to that. In January 2019, Opmanis, 27, who had previously made the acquaintance of Robert Shuey, 29, through their mutual interest in dirt bike riding, were at the Dogwood bar in Blue Jay. Shuey, who lived not too distant from the bar, invited Opmanis, who had been drinking heavily, to come to his home. Opmanis at some point vomited while he was at Shuey's house, af-

ter which a fight ensued. Opmanis was beaten severely and required hospitalization as a result, losing a portion of his vision in his left eye. The doctors treating him considered it necessary to insert a plate in his head because a portion of his skull had collapsed. Encouraged by his family, Opmanis filed a civil suit against Shuey. The filing of the suit antagonized Shuey, an avid motorcyclist and gang member against whom the San Bernardino County District Attorney's Office alone had filed no fewer than 17 criminal charges, having obtained felony convictions for burglary, illegal firearms possession and drug dealing, as well as reduced or

misdemeanor convictions for theft, auto theft, possession of drugs and assault/fighting. In addition, Shuey has a reputation for fighting with and stabbing people. During the February-to-June timeframe, Shuey made repeated threats against Opmanis and his family, on occasion in public places and in public situations. In reaction, Opmanis obtained a handgun, a Glock 27 .40 caliber, which he stored unloaded in a lockbox below the passenger side seat of his vehicle, a black 2000 Mercedes. He kept the magazine for the gun separately in the glove compartment.

On July 11, 2019 Shuey and another avid motorcyclist, Shane Codman, had ridden their motorcycles down from the mountain communities first to Corona and then to a "Bike Night" in Riverside, where they met up with Sammy Davis around 6 p.m., in the course of which they were consuming alcohol. The three left Riverside around 8 p.m., riding their motorcycles to return to the mountains. They intended to stop at Goodwin's Market in Crestline to purchase hamburger meat and beer before going to Shuey's home in Blue Jay.

Meanwhile, Opmanis had gone to Goodwin's Market, located at 24089 Lake Gregory Drive in Crestline. An external security camera at Goodwin's Market, operated by Scottsdale, Arizona-based Clear Protection Services, Inc. shows Opmanis driving into the store's parking lot at 8:49 p.m. and an internal camera also operated by Clear Protection shows him coming into the store at 8:52 p.m., accompanied by two individuals, one identified as Osvaldo Nuno and another known only as Johnny. Davis, Shuey and Codman arrived at Goodwin's Market at 9:02 p.m., as recorded by the store's external security camera, and are seen coming into the store at 9:04 p.m. While Opmanis knew both Shuey and Codman, he had no pre-

vious encounters with Davis and did not know him.

According to an individual speaking on behalf of Clear Protection Services, the video surveillance system in place at Goodwin's Market consists of several cameras, all of which run continuously and are not triggered by motion sensors or any other devices which interrupt the video surveillance.

The most telling piece of evidence in the case involving Opmanis is the video taken from one of the store's external cameras which has the parking space where Opmanis's Mercedes is parked very close to the center of its field of perspective. The store's other cameras, while useful in putting the events of that evening in a temporal order, do not actually capture the shooting itself. The store's inside camera at the entrance is time-stamped approximately 12 seconds faster than the outside camera that captured the moving images of the shooting.

At 9:06 p.m., Opmanis, Nuno and Johnny are shown on the internal and then the external cameras leaving the store. Thereafter, Opmanis puts groceries into his Mercedes. The external camera captures him in an exchange with a woman who had been shopping at the store, and from whom he obtained, according to a later statement, her phone number. Between 9:08 p.m. and 9:09 p.m., the external video shows Opmanis talking to Nuno and Johnny while they are seated in Johnny's vehicle, which is parked proximate to Opmanis's Mercedes.

The external camera shows Sammy Davis emerging from the store at 9:09 p.m., at which point he lights a cigarette and spots Opmanis. The camera's audio picks up Davis yelling at Opmanis, "It's on you, punk." Johnny and Nuno in Johnny's vehicle have begun to drive away until eventually they are fully out of the camera's range. The external cam-



Photo taken in February shows injuries sustained by Alex Opmanis three weeks following his beating by Robert Shuey in January 2019.

Continued on Page 7

In The Midst Of His Lawyer's Valiant Effort To Convince Judge To Spare His Life, Merritt Seeks To Fire Him *from page 4*

itself to the prosecution's narrative which held that after abandoning the Isuzu Trooper Merritt had returned northward to Rancho Cucamonga eventually by means of the 215 Freeway, possibly stopping at the McStay home in Fallbrook in northern San Diego County to clean up or eliminate evidence of the murders that had taken place there nearly two days before. What was left out of Boles' testimony and an exhibit he had prepared for that testimony, Maline said, was that just a few minutes before the connection between Merritt's cell phone and the tower along the I-15 had registered, Merritt's cell phone had connected with cell towers along the 91 Freeway. At times, Judge Smith appeared to be growing impatient with Maline, and he was resistant to Maline's attempt to enlarge the scope of the hearing to make an exhaustive review of the evidence presented during trial.

"We could spend days in arguing all the issues," Judge Smith said with regard to ground Maline was seeking to cover, and he upbraided Maline for having filed the motion "alleging what you believe are the insufficiencies of the evidence 15 minutes before the hearing today." Judge Smith said he would conduct the hearing in a way that would focus on the most salient points Maline was seeking to reference in the motion, "even though it was not timely filed." Maline apologized for his tardiness but pointed out that

County. This entirely obliterates the prosecution theory that it was Merritt who drove the McStay family vehicle to San Ysidro, Maline said.

Maline propounded that "Not one thing they [the prosecution] argued was correct." Maline said, "Certain critical evidence was misrepresented by the prosecution" and he asserted that the prosecutors on the case "outright lied. There's no evidence linking Mr. Merritt to these murders. None. Most of the [assertions] the People put forth in this case are not true. There is nothing that we cannot face and give the court the right explanation for."

Judge Smith countered that with "You argued all of that in your closing [arguments] in the trial."

his motion for a time extension had been denied. Judge Smith observed "most of the issues were raised in previous arguments and in previous motions."

Maline retorted that "There is no evidence linking Mr. Merritt to the crime" and he charged that the prosecution "manipulated the evidence." Maline suggested that the judge may not have known about or recognized the manipulation, asserting that he, McGee and Guerard "didn't know that at the time they were making it because it was too much material." The prosecution had foisted on the jury, Maline said "things that are not accurate. The way they argued it had a big impact. They [the prosecution] aren't allowed [to inculcate in the jury] false things."

Judge Smith countered that with "You argued all of that in your closing [arguments] in the trial."

months since the verdict," to lay out the arguments he was making that morning and that the seven months now past was "plenty of time for you to present it in a timely manner." He told Maline that for what he was attempting to do "a better vehicle would have been a writ of habeas corpus."

Judge Smith asked Maline how much time he would need to make the case he was asserting existed and Maline replied he wanted to "point out the pattern [of prosecutorial misconduct] for as long as you'll give me."

Remarking that the noon hour had been eclipsed, Smith adjourned for lunch.

Upon the resumption of the proceedings after an abbreviated lunch break, Maline announced that Merritt wanted to fire him as his attorney. There were audible gasps from around the courtroom, which included more than 30 Merritt and McStay family members and their supporters as well as four of the jurors who had rendered the verdict in the trial. At that point, Merritt and Maline accompanied Judge Smith into his chambers alone other than a sheriff's department bailiff who escorted the defendant. Roughly a half hour later, they emerged, at which point Judge Smith announced that he was not granting Merritt's motion to relieve Maline as his defense counsel.

The hearing resumed with Maline carrying on in his efforts on behalf of his client as if no challenge to his representation or status as Merritt's attorney had occurred.

There was a degree of irony to this, as the next issue dealt with in the proceedings was Maline calling McGee, with whom he had ardently labored in representing Merritt in an exhaustive effort to prepare for litigation and during a marathon trial that included jury selection in 2018 and a presentation of evidence that spanned from early January until June, to the stand in order to

elicit testimony from him that would establish McGee had rendered ineffective assistance of counsel during the trial.

In his questioning of McGee, with whom he was once in a partnership, Maline angled his questions to elicit from McGee why he had not more aggressively challenged FBI Agent Boles, and then had not put the expert witness they had consulted with, Vlad Jovanovic, on the stand to counteract what Maline maintained were misrepresentations of fact and interpretation propounded by the prosecution.

Maline suggested that McGee after wringing from Boles during cross examination an acknowledgment of the FBI agent's limited technical expertise with regard to cellular systems, failed to follow that up with more exacting questions that would have illustrated to the jury the unreliability of Boles' testimony during his direct examination by the prosecution which had proven so damaging to their client. McGee had likewise failed to drive home to the jurors the errors contained in AT&T cellphone and cell tower records by pointedly questioning Boles on that issue as well, Maline sought to illustrate.

Maline asserted that Boles essentially had inadequate knowledge and expertise to make adequate location determinations extrapolated from cell phone data, and McGee did not dispute the assertion. Maline then asked McGee why he had not renewed a motion that was previously denied by Judge Smith to exclude testimony and evidence provided by Boles with regard to Merritt's location based upon cell phone data after McGee had established that Boles lacked that expertise.

"I did not consider renewing the motion after the fact," McGee said. "One, I did not think it would be successful and two, if it was successful, the jury still heard it anyway. So, unringing that bell is really hard."

Maline asked, "Did

you think that circumstance in and of itself would be a strategic reason to then bring up all the anomalies in the state's case in the phone records?"

"Well, after Boles testified, we did talk to Jovanovic about his testimony and whether or not he should [testify]," McGee responded. "We both agreed it would be probably be more counterproductive for him to testify. So, both he and I decided it would be better if he stayed off the stand. The main reason is what we were trying to establish we achieved better than we ever hoped with Boles. So, any testimony from Mr. Jovanovic about some issues, it would be hampering the presentation as a whole."

The prosecution told Judge Smith he should dispose of Maline's motions and get on with condemning Merritt to death.

"We could sit here today and argue until we're blue in the face over the interpretation of every piece of evidence in this case," Supervising Deputy District Attorney Britt Imes said. "As the court indicated, we could be here for days hearing testimony and rehashing exhibits. A reinterpretation of the evidence is not new evidence, and in this case that reinterpretation of the evidence does not undermine the evidence that the jury heard over the course of six months in order to render their verdict."

Maline asserted that evidence is not new evidence, and in this case that reinterpretation of the evidence does not undermine the evidence that the jury heard over the course of six months in order to render their verdict. There are many misstatements as to the accuracy of the evidence that was received. However, the record speaks for itself. The jury was presented with a full and complete picture of the cell phone evidence, and I cite for the record that the court already knows on both February 25 and February 26 of 2019 Mr. McGee spent almost his entire cross examination talking about the efficacy of those records, the importance of the findings from them, including the beginning cell tower and the ending cell tower."

Imes said Judge Smith *Continued on Page 14*

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Multiple Interruptions And Deletions, Some At Crucial Junc-tures, Made In Surveillance Video That Caught Fatal Shooting On Cel-luloid from front page 5

era captures Shuey and Codman engaged in conversation as they together with Davis head for their motorcycles. Thereafter, some 28 seconds of the video is cut and the conversation between Davis, Shuey and Codman seems to be edited out. At 9:10 p.m. on the external video, Opmanis can be seen standing on the running board of his Mercedes and remaining regardful of Davis, Shuey and Codman.

At 9:11 p.m., the video shows Johnny and Nuno pull back into the parking lot and park, lights on, behind Opmanis's black Mercedes SUV. Opmanis then appears to be talking to them. Johnny gets out of the vehicle, and then gets back in.

Thereafter, two seconds are cut from the video footage as there is more conversation between Opmanis and Johnny. Following that, another 18 seconds is cut from the footage and more audio of the bikers' conversation is cut. Between 9:11:36 p.m. and 9:11:44 p.m., Opmanis is outside his vehicle looking in the direction of the bikers. Johnny gets back into his vehicle; he and Nuno remain parked behind Opmanis. Both vehicles have their lights on. Shortly thereafter the three bikers start their motors. There is indecipherable yelling at that point, which cannot be understood because of the loud motors. Opmanis looks into his vehicle and has one hand on the roof. A man who has come out of the store who is parked next to Opmanis is putting groceries into his car. Between 9:11:44 p.m. and 9:12:06 p.m., Opmanis looks into his vehicle while he yet has his hand on the car roof.

Audible are three horn honks, but it is not clear from where that sound emanates. There is another cut in the video as the man parked next to Opmanis crosses by him as he puts his cart into a shopping cart return holder next to Opmanis's Mercedes. Between 9:12:06 p.m. and 9:12:24 p.m. the motorbikes' engines are rumbling loudly as Opmanis appears to be looking at the man parked next to him who is now going back to get into his vehicle after putting his shopping cart away in the cart return. Two seconds are cut from the footage. Between 9:12:26 p.m. and 9:13:20 p.m., amidst revving motorcycle engines, the bikers, with Shuey in the lead, begin to move out from the parking lot, crossing in front of the Mercedes. As they pass, Shuey can be seen flipping Opmanis off with his right hand, which causes his motorcycle to momentarily swerve while he is making the hand gesture. This provokes Opmanis, who responds by himself flipping Shuey off and, it appears, honking his horn. Codman and Davis honk back and turn hard left to confront Opmanis, who can be seen kicking the shopping cart return holder. Shuey briefly exits the parking lot, but then makes an immediate U-turn to return to the parking lot, joining Codman, who yet has his helmet on and is in a verbal exchange with Opmanis. Sammy Davis is at that point parked near the rear of Opmanis's Mercedes SUV. Shuey pulls in and parks in between Codman and Davis, at the front of Alex's SUV. Between 9:13:20 p.m. and 9:13:28 p.m. on the video, Opmanis is surrounded by the three bikers. Opmanis is a few feet from the driver's door where he was previously standing, and it appears he is having a loud and animated exchange with Davis and Codman as Shuey has arrived. Davis dismounts from his bike. Between 9:13:28 p.m. and 9:13:40 p.m., twelve seconds are cut from the video. From 9:13:40 p.m. to 9:13:48 p.m., Shuey removes his helmet, dismounts from his bike, and approaches Opmanis. Davis, at the rear of the Mercedes, at the same time as Shuey takes off his helmet and his jacket. He then dismounts his bike. Shuey and Davis are approaching Opmanis, it appears aggressively. Both have short sleeved black shirts and jeans and similar haircuts, but Davis can be differentiated by the large, white graphic on the front of his shirt. Codman remains on his motorcycle to the far right in the video camera's field. Patrons are scattered about, with cars coming and going and other commotion. There is a two second overlap from the last to the next video segment, which runs from 9:13:46 p.m. to 9:13:56 p.m. In it, Shuey is approaching Opmanis, who is toward the rear of the SUV and makes his way back to the front driver's side door that is open, as Sammy Davis at first moves in but then circles around the back side of Shuey. At that point, it appears that the assault on Opmanis begins, followed by the crucial 12-second gap in the video. When the video resumes at 9:14:08 p.m., the physical altercation between Opmanis and Davis is in full swing more toward the rear of the SUV than the front. A shopping cart or carts can be heard rattling violently and the cart return can be seen shaking. Shuey approaches the fight as Davis and Opmanis appear to be hunched over and struggling. The fight between them moves toward the front of Alex's SUV. Shuey has his phone out with its light engaged, and appears to be videoing the fight. Two shots are heard. Nuno gets out of the passenger side of Johnny's vehicle, still parked behind the Opmanis's Mercedes SUV with the lights on. Nuno immediately returns to the vehicle and Johnny speeds off. Shuey runs away and ducks behind a parked car. A Goodwin's Market patron with his family are walking towards the entrance of

the store, viewing the incident taking place over the top/roof of a vehicle parked between him and where the fight and shooting is taking place. As his wife with a baby runs inside, the patron appears to be looking at Shuey, who dipped down when the shots were fired and ended up directly in front of the patron's view. Shuey is crouching down approximately eight to ten feet away from where Davis was shot, very close to the SUV and out of view of the witness standing under the American Flag.

Subsequently, in his witness statement, the patron would confuse Shuey with Davis, describing the individual shot as being located not where Davis was but at a more distant point consistent with Shuey's position on the video.

After the shooting, between 9:14:30 and 9:15:00, Opmanis can be heard attempting to summon help. "Someone call an ambulance! Please call for help," Opmanis is heard saying. When Opmanis produces his phone to make a call and Shuey begins moving toward him, however, Opmanis yells, "Get back! Get Back!" and gestures strongly to Shuey. Someone can be heard saying, "He's dying." At that point, Opmanis beckons to Codman, "Shane! Help! Shane, come help me." Shuey momentarily crouches behind a vehicle.

By 9:17 p.m., a woman, later identified as an off-duty nurse, is seen on the video attempting to administer to Davis. The nurse will later report that Davis reeked of alcohol.

Also by 9:17 p.m., Codman mounted his bike and rode off.

Shuey, however remained at the scene for more than four minutes following the shooting, at one point retrieving something from Davis's person or next to him. He then made a hand gesture towards Opmanis, put his helmet on, started his motorcycle and rode away at 9:18 p.m..

Opmanis remained in place, near his vehicle, as over the next several

minutes other patrons from the store joined him in awaiting the arrival of authorities. On the clip of the video between 9:21:24 p.m. and 9:22:10 p.m., a patron can be seen bringing Opmanis, who appears to be injured, a wet rag with ice, and thereafter Opmanis can be seen using it to dab with it near his mouth and other parts of his face.

Sheriff's vehicles with their lights on and sirens blaring arrive during that portion of the video clip running from 9:22:20 p.m. to 9:22:50 p.m. On the video clip that covers the span between 9:23:18 p.m. to 9:24:50 p.m., sheriff's deputies can be seen approaching Opmanis, turning him around, frisking him and then handcuffing him. Opmanis quietly went with them to a sheriff's vehicle. In the 9:25:24 p.m. to 9:25:36 p.m. clip, sheriff's deputies and paramedics are on the scene and are tending to Davis. On the 9:25:38 p.m. to 9:25:56 p.m. clip, sheriff's deputies can be seen questioning witnesses while paramedics tend to Davis. In the final clip that was provided by the district attorney's office as part of discovery, running from 9:26:04 p.m. to 9:26:14 p.m., the officers continue, as before, to question witnesses while paramedics tend to Davis. Opmanis is still in the back of the police car.

While Opmanis was taken into custody for questioning, he was neither officially arrested nor booked. The initial sheriff's department investigation, which included a review of the unaltered security video, led detectives to conclude that the shooting was one that was made in self-defense.

Significantly, in its initial release of information pertaining to the shooting made on July 12, the sheriff's department did not identify Opmanis, providing only that he was 27 years old, did not provide his place of residence, identified him as the "victim" and 29-year-old Davis as the "suspect."

The July 12 release

stated, "At 9:17 p.m. deputies were called to Goodwin's Market for a call of shots fired in the parking lot. Deputies arrived and found Sammy Davis on the ground suffering from a gunshot wound and an off-duty nurse administering medical aid. Davis was transported to St. Bernadines Hospital where he was pronounced deceased at 10:12 p.m."

Homicide detectives who responded to the Goodwin's Market parking lot soon ascertained that a video of the incident was available, and their viewing of it after they obtained it, taken together with witness statements and the statement Opmanis provided, formed the basis of their initial finding that Opmanis was under assault and acted in self-defense.

The sheriff's department release further stated, "The victim recognized one of the men as an associate of the suspect that assaulted him in January 2019, which resulted in hospitalization. He felt threatened as the three subjects approached, verbally taunting him, and retrieved his firearm from a compartment in his car. One of the subjects, Sammy Davis, grabbed the victim's shirt and punched him multiple times. The victim fired his gun, striking Davis and stopping the assault."

According to the sheriff's department, "The investigation will be submitted to the district attorney's office for review."

The investigation was carried out by Detective Eric Ogaz under the supervision of Sergeant Angelo Gibilterra.

One element of that investigation pertained to whether Opmanis, who did not have a concealed weapon permit, was in compliance with California code in having carried the firearm in his vehicle.

Under California law, an individual without a concealed weapon permit can transport a firearm in a vehicle only if the firearm is unloaded and locked in the trunk

Continued on Page 17

Public Notices

AMENDED ORDER TO SHOW CAUSE FOR CHANGE OF NAME CASE NUMBER CIVDS1937943

TO ALL INTERESTED PERSONS: Petitioner: Carolyn Denise Jernigan filed with this court for a decree changing names as follows: Carolyn Denise Jernigan to Gi Gi La Quinta ZaMaya

THE COURT ORDERS that all persons interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted. Any person objecting to the name changes described above must file a written objection that includes the reasons for the objection at least two court days before the matter is scheduled to be heard and must appear at the hearing to show cause why the petition should not be granted. If no written objection is timely filed, the court may grant the petition without a hearing.

Notice of Hearing:

Date: 02/07/2020

Time: 8:30 a.m.

Department: S16

The address of the court is Superior Court of California, County of San Bernardino, San Bernardino District - Civil Division, 247 West Third Street, Same as above, San Bernardino, CA 92415-0210, San Bernardino

IT IS FURTHER ORDERED that a copy of this order be published in the SAN BERNARDINO COUNTY SENTINEL in San Bernardino County California, once a week for four successive weeks prior to the date set for hearing of the petition.

Dated: Dec. 24, 2019

Lynn M. Poncin

Judge of the Superior Court. Published in the San Bernardino County Sentinel on 12/27/19, 1/3/20, 1/10/20 & 1/17/20

STATEMENT OF DAMAGES

CASE NUMBER: RIC 1812475

Personal Injury or Wrongful Death)

PLAINTIFF: Guadalupe Ortiz

DEFENDANT: Michael Smithling et al.

To: Cross-Defendant BLAKE BURNS

Plaintiff (name of one plaintiff only): Cross-Complainant CITY OF CHINO HILLS

seeks damages in the above-entitled action, as follows:

General damages

EQUITABLE INDEMNITY, APPORTIONMENT AND DECLARATORY RELIEF [of] \$1,000,000

RIC 1812475

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside

STREET ADDRESS: 4050 Main Street

MAILING ADDRESS: 4050 Main Street.

CITY AND ZIP CODE: RIVERSIDE 92501

BRANCH NAME: RIVERSIDE HISTORIC COURT-

Public Notices

HOUSE
Bernadette C. Brouses,
SBN 232812 / Indoos Desai SBN
256264 / Paulina H. Jaafar SBN
327825

DANIELS, FINE, ISRAEL,
SCHONBUCH & LEBOVITS,
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90067

Ph: 310-556-7900 Fax:
310-556-2807
brouses@dfis-law.com / de-
sai@dfis-law.com / jaafar@dfis-
law.com

Date: December 26, 2019
s/ Bernadette C. Brouses,
Esq.

Published in the San Bernardino County Sentinel on 12/27/19, 1/3/20, 1/10/20 & 1/17/20

CASE NUMBER: RIC 1812475

REQUEST FOR ENTRY
OF DEFAULT

CASE NUMBER: RIC 1812475
(Personal Injury or Wrongful
Death)

PLAINTIFF: Guadalupe
Ortiz

DEFENDANT: Michael
Smithling et al.

To (name of one defendant
only): Cross-Defendant BLAKE
BURNS

TO THE CLERK: On the
complaint or cross-complaint
filed on: July 8, 2019 by: Cross-
Complainant CITY OF CHINO
HILLS

Enter default of defendant:
BLAKE BURNS

RIC 1812475
SUPERIOR COURT OF
CALIFORNIA, COUNTY OF
Riverside

STREET ADDRESS: 4050
Main Street

MAILING ADDRESS:
4050 Main Street.

CITY AND ZIP CODE:
RIVERSIDE 92501

BRANCH NAME: RIV-
ERSIDE HISTORIC COURTHOUSE

ATTORNEYS FOR: De-
fendant Inland Valley Humane
Society.

Bernadette C. Brouses,
SBN 232812 / Indoos Desai SBN
256264 / Paulina H. Jaafar SBN
327825

DANIELS, FINE, ISRAEL,
SCHONBUCH & LEBOVITS,
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90067

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310-556-2807
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sai@dfis-law.com / jaafar@dfis-
law.com

Date: December 27, 2019
s/ Bernadette C. Brouses

Published in the San Bernardino County Sentinel on 12/27/19, 1/3/20, 1/10/20 & 1/17/20

FBN 20190014438

The following persons are doing
business as: JADED JEWEL 10224

TIMBERLANE AVENUE HES-
PERIA, CA 92345 WENDY L WINSTON

10224 TIMBERLANE AVENUE HES-
PERIA, CA 92345 [and] GALON R MORRIS

10224 TIMBERLANE AVENUE HES-
PERIA, CA 92345

Mailing Address: P.O. BOX
400103 HESPERIA, CA 92340

This Business is Conducted By: A
GENERAL PARTNERSHIP

Signed: BY SIGNING BELOW,

I DECLARE THAT ALL INFOR-
MATION IN THIS STATEMENT

IS TRUE AND CORRECT. A regis-
trant who declares as true infor-
mation, which he or she knows to
be false, is guilty of a crime. (B&P
Code 17913) I am also aware that
all information on this statement be-
comes Public Record upon filing.

S/ WENDY L WINSTON

This statement was filed with
the County Clerk of San Ber-
nardino on: 12/12/2019

I hereby certify that this is a cor-
rect copy of the original state-
ment on file in my office.

Began Transacting Business: N/A

County Clerk, Deputy

NOTICE- This fictitious business
name statement expires five years
from the date it was filed in the of-
fice of the county clerk. A new fictitious
business name statement must be filed
before that time. The filing of this state-
ment does not of itself authorize the use
in this state of a fictitious name in viola-
tion of the rights of another under federal,
state, or common law (see section 14400 et.
Seq. Business & Professions Code).

Published in the San Bernardino

County Sentinel on 1/10, 1/17, 1/24
& 1/31, 2020

Corrected on 1/3/20, 1/10/20,
1/17/20, 1/24/20

ABANDONMENT OF USE
OF FICTITIOUS BUSINESS
NAME

Your registered FBN No.

is 20190014686 and was filed

in San Bernardino County on

12/19/2019. Your related FBN No.

is 20190007599 and was filed in San

Bernardino County on 06/26/2019.

The following person(s) has (have)

abandoned the business name(s):

Trinity Trucking, 15024 Mt Wilson

Ln, Fontana, CA 92336, Bernie G

Dominguez, 15024 Mt Wilson Ln,

Fontana, CA 92336, David A. Wil-
liams, 2765 West Loma Vista Drive,

Rialto, CA 92377

BY SIGNING BELOW, I DE-
CLARE THAT ALL INFOR-
MATION IN THIS STATEMENT

IS TRUE AND CORRECT. A regis-
trant who declares as true infor-
mation, which he or she knows to
be false, is guilty of a misdemeanor
punishable by a fine not to exceed

Public Notices

of this statement does not of itself
authorize the use in this state of a ficti-
tious name in violation of the rights
of another under federal, state, or
common law (see section 14400 et.
Seq. Business & Professions Code).
Published in the San Bernardino
County Sentinel on 12/27/19, 1/3/20,
1/10/20 & 1/17/20

FICTITIOUS BUSINESS
NAME STATEMENT FILE NO-
20190014702

The following person(s) is(are)
doing business as: Rios Senior Well-
ness Center, 9675 Monte Vista Avenue,
Suite F, Montclair, CA 91763,
Mailing Address: 495 E. Rincon
Street, #215, Corona, CA 92879, Rios
Southwest Medical Group Professional,
9939 Magnolia Avenue, Riverside,
CA 92503

Business is Conducted By: A
Corporation

Signed: BY SIGNING BELOW,
I DECLARE THAT ALL INFOR-
MATION IN THIS STATEMENT IS
TRUE AND CORRECT. A registrant
who declares as true information,
which he or she knows to be false,
is guilty of a crime. (B&P Code
17913) I am also aware that all information
on this statement becomes Public Record
upon filing. S/ KIMBERLY RUTTLEN

FBN 20200000276
The following person is doing busi-
ness as: BEL AMI FOODS 13247
FOOTHILL BLVD. #13-207 RAN-
CHO CUCAMONGA, CA 91739
KIMBERLY RUTTLEN 13247
FOOTHILL BLVD. #13-207 RAN-
CHO CUCAMONGA, CA

This Business is Conducted
By: AN INDIVIDUAL

Signed: BY SIGNING BE-
LOW, I DECLARE THAT ALL INFOR-
MATION IN THIS STATEMENT IS
TRUE AND CORRECT. A registrant
who declares as true information,
which he or she knows to be false,
is guilty of a crime. (B&P Code
17913) I am also aware that all information
on this statement becomes Public Record
upon filing. S/ KIMBERLY RUTTLEN

This statement was filed with
the County Clerk of San Bernardino
on: 12/19/2019

I hereby certify that this is a cor-
rect copy of the original statement on
file in my office.

Began Transacting Business:
12/17/2019

County Clerk, s/ E4004

NOTICE- This fictitious business
name statement expires five years
from the date it was filed in the of-
fice of the county clerk. A new fictitious
business name statement must be filed
before that time. The filing of this state-
ment does not of itself authorize the use
in this state of a fictitious name in viola-
tion of the rights of another under federal,
state, or common law (see section 14400 et.
Seq. Business & Professions Code).

Published in San Bernar-
dino County Sentinel on
1/10, 1/17, 1/24 & 1/31, 2020.

FICTITIOUS BUSINESS
NAME STATEMENT FILE NO-
20200000243

The following person(s) is(are)
doing business as: My Calculations,
2772 Moose Creek Lane, Ontario,
CA 91761, Paula Oglesby, 2772
Moose Creek Lane, Ontario, CA
91761

Business is Conducted By: An
Individual

Signed: BY SIGNING BELOW,
I DECLARE THAT ALL INFOR-
MATION IN THIS STATEMENT IS
TRUE AND CORRECT. A registrant
who declares as true information,
which he or she knows to be false,
is guilty of a crime. (B&P Code
17913) I am also aware that all information
on this statement becomes Public Record
upon filing. S/ PAULA OGLESBY

This statement was filed with
the County Clerk of San Bernardino
on: 1/7/2020

I hereby certify that this is a cor-
rect copy of the original statement on
file in my office.

Began Transacting Business:
1/6/2020

County Clerk, s/ E4004

NOTICE- This fictitious business
name statement expires five years
from the date it was filed in the of-
fice of the county clerk. A new fictitious
business name statement must be filed
before that time. The filing of this state-
ment does not of itself authorize the use
in this state of a fictitious name in viola-
tion of the rights of another under federal,
state, or common law (see section 14400 et.
Seq. Business & Professions Code).

Published in San Bernar-
dino County Sentinel on
1/10/2020, 1/17/2020, 1/24/2020,
1/31/2020

FICTITIOUS BUSINESS
NAME STATEMENT FILE NO-
20200000296

The following person(s) is(are)
doing business as: Alvarez Inter-
preting Services, 3791 E. Piedmont
Dr., Highland, CA 92346, Mailing
Address: POBOX 3286, San Ber-
nardino, CA 92413, John V. Alvarez,
3791 E. Piedmont Dr., Highland,
CA 92346

Business is Conducted By: An
Individual

Signed: BY SIGNING BELOW,
I DECLARE THAT ALL INFOR-
MATION IN THIS STATEMENT IS
TRUE AND CORRECT. A registrant
who declares as true

Public Notices

Any person objecting to the name changes described above must file a written objection that includes the reasons for the objection at least two court days before the matter is scheduled to be heard and must appear at the hearing to show cause why the petition should not be granted. If no written objection is timely filed, the court may grant the petition without a hearing.

Notice of Hearing:

Date: 02/18/2020

Time: 8:30 a.m.

Department: S16

The address of the court is Superior Court of California, County of San Bernardino, San Bernardino District - Civil Division, 247 West Third Street, Same as above, San Bernardino, CA 92415-0210, San Bernardino

IT IS FURTHER ORDERED that a copy of this order be published in the SAN BERNARDINO COUNTY SENTINEL in San Bernardino County California, once a week for four successive weeks prior to the date set for hearing of the petition.

Dated: Jan., 07, 2020

Lynn M. Poncin

Judge of the Superior Court.

Published in the San Bernardino County Sentinel on 1/10/20, 1/17/20, 1/24/20, 1/31/20

NOTICE OF PETITION TO ADMINISTER ESTATE OF EDDIE ALFORD FIELDS

Case No. PROPS1900851

To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both, of EDDIE ALFORD FIELDS

A PETITION FOR PROBATE has been filed by Carol Fields in the Superior Court of California, County of SAN BERNARDINO.

THE PETITION FOR PROBATE requests that Carol Fields be appointed as personal representative to administer the estate of the decedent.

THE PETITION requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority.

A HEARING on the petition will be held on Feb. 25, 2020 at 8:30 AM in Dept. No. S35 located at 247 W. Third St., San Bernardino, CA 92415.

IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the decedent, you must file your claim with the court and mail a copy to the personal representative appointed by the court within the later of either (1) four months from the date of first issuance of letters to a general personal representative, as defined in section 58(b) of the California Probate Code, or (2) 60 days from the date of mailing or personal delivery to you of a notice under section 9052 of the California Probate Code.

Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.

YOU MAY EXAMINE the file kept by the court. If you are a person interested in the estate, you may file with the court Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk.

Petitioner: Carol Fields

Public Notices

CAROL FIELDS
6815 PALERMO PL
RANCHO CUCAMONGA
CA 91701
CNH 67116 FIELDS
Published in the San Bernardino county Sentinel on January 17, 24, 31, 2020

ORDER TO SHOW CAUSE FOR CHANGE OF NAME CASE NUMBER CIVDS2001513

TO ALL INTERESTED PERSONS: Petitioner: Brenda G Jimenez for Minor Carlos Jimenez filed with this court for a decree changing names as follows:

Carlos eduardo Jimenez II to CJ Jimenez

THE COURT ORDERS that all persons interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted. Any person objecting to the name changes described above must file a written objection that includes the reasons for the objection at least two court days before the matter is scheduled to be heard and must appear at the hearing to show cause why the petition should not be granted.

If no written objection is timely filed, the court may grant the petition without a hearing.

Notice of Hearing:

Date: 02/26/2020

Time: 8:30 a.m.

Department: S16

The address of the court is Superior Court of California, County of San Bernardino, San Bernardino District - Civil Division, 247 West Third Street, Same as above, San Bernardino, CA 92415-0210, San Bernardino

IT IS FURTHER ORDERED that a copy of this order be published in the SAN BERNARDINO COUNTY SENTINEL in San Bernardino County California, once a week for four successive weeks prior to the date set for hearing of the petition.

Dated: Jan., 16, 2020

Lynn M. Poncin

Judge of the Superior Court.

Published in the San Bernardino County Sentinel on 1/17/20, 1/24/20, 1/31/20, 2/7/20

ORDER TO SHOW CAUSE FOR CHANGE OF NAME CASE NUMBER CIV-VS2000028

TO ALL INTERESTED PERSONS: Petitioner: Tyrone Griffin filed a petition with this court for a decree changing names as follows:

Tyrone Griffin to Tyrone Griffin El

THE COURT ORDERS that all persons interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted. Any person objecting to the name changes described above must file a written objection that includes the reasons for the objection at least two court days before the matter is scheduled to be heard and must appear at the hearing to show cause why the petition should not be granted.

If no written objection is timely filed, the court may grant the petition without a hearing.

Notice of Hearing:

Date: 3/04/2020

Time: 8:30 a.m.

Department: V15

The address of the court is Superior Court Victorville District, 14455 Civic Drive Ste 100, Victorville, CA 92392

IT IS FURTHER ORDERED that a copy of this order be published in the SAN BERNARDINO COUNTY SENTINEL in San Bernardino County California, once a week for four successive weeks prior to the date set for hearing of the petition.

Dated: Jan. 16, 2020

Carlos M. Cabrera

Judge of the Superior Court.

Published in the San Bernardino County Sentinel on 1/17/20, 1/24/20, 1/31/20, 2/7/20

FICTITIOUS BUSINESS NAME STATEMENT FILE NO-20190014622

The following person(s) is(are) doing business as: Rosa Tinoco Interpreting, 2851 S La Cadena Drive, STE 209, Colton, CA 92324, Rosa M. Tinoco, 2122 Chestnut St, Apt 303, San Bernardino, CA 92410

Business is Conducted By: An Individual

Signed: BY SIGNING BELOW, I DECLARE THAT ALL INFORMATION IN THIS STATEMENT IS TRUE AND CORRECT. A registrant who declares as true information, which he or she knows to be false, is guilty of a crime. (B&P Code 17913)

Business is Conducted By: An Individual

Signed: BY SIGNING BELOW, I DECLARE THAT ALL INFORMATION IN THIS STATEMENT IS TRUE AND CORRECT. A registrant who declares as true information, which he or she knows to be false, is guilty of a crime. (B&P Code 17913)

Business is Conducted By: An Individual

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Public Notices

business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code) Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202043MT

FBN 20200000421
The following person is doing business as: INSTINCT DRIVEN 1125 W 10TH ST SAN BERNARDINO, CA 92411; ENRIQUE RUIZ RAMIREZ 1125 W 10TH ST SAN BERNARDINO, CA 92411

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: 01/10/2019 By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ ENRIQUE RUIZ RAMIREZ, OWNER Statement filed with the County Clerk of San Bernardino on: 01/09/2020 I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code)

Public Notices

Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202044MT

FBN 20200000419
The following person is doing business as: SPOT ON REAL ESTATE; SPOT ON REALTY; SPOT ON EQUITIES; SPOT ON LENDING; FLIPPIN COUSINS SOLUTIONS 325 W HOSPITALITY LANE SUITE 100 SAN BERNARDINO, CA 92408;

SPOT ON LENDING, INC 325 W HOSPITALITY LANE 100100 SAN BERNARDINO, CA 92408 The business is conducted by: A CORPORATION The registrant commenced to transact business under the fictitious business name or names listed above on: N/A By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ JENNIFER BATES, PRESIDENT

Public Notices

Statement filed with the County Clerk of San Bernardino on: 01/09/2020 I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code)

Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202046IR

FBN 20200000402
The following person is doing business as: SKC ACC GROUP 539 W. 25TH ST #3 SAN BERNARDINO, CA 92405; WARNISHA M WINSLETT 1274 W 24TH ST SAN BERNARDINO, CA 92405

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ JENNIFER BATES, PRESIDENT

Public Notices

that all information on this statement becomes Public Record upon filing. s/ WARNISHA M WINSLETT, OWNER Statement filed with the County Clerk of San Bernardino on: 01/09/2020 I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code)

Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202048CH

FBN 20200000400
The following person is doing business as: ALAMO MOTORCARLS 500 EAST ST STE 313 ONTARIO, CA 91764; ADRIAN ALAMO 3930 N CONLON AVE COVINA, CA 91722

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ JENNIFER BATES, PRESIDENT

Public Notices

as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ ADRIAN ALAMO, OWNER Statement filed with the County Clerk of San Bernardino on: 01/09/2020 I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code)

Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202049CH

FBN 20200000577
The following person is doing business as: NJ AUTO BROKER 301 9TH ST SUITE 105 REDLANDS, CA 92374; CHRISTINE T FEBIOLA MARAMIS 301 9TH ST SUITE 105 REDLANDS, CA 92374

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ JENNIFER BATES, PRESIDENT

Public Notices

listed above on: 01/13/2020 By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ CHRISTINE T. FEBIOLA MARAMIS, OWNER Statement filed with the County Clerk of San Bernardino on: 01/13/2020 I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code)

Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202050CV

FBN 20200000576
The following person is doing business as: FLAME HIBACHI; STONEY ISLAND 1233 W VICTORIA ST RIALTO, CA 92376; JORDANTMOORE 1233 W VICTORIA ST RIALTO, CA 92376; MARY-

Public Notices

CRUZ TELLEZ-LOPEZ 1233 W VICTORIA ST RIALTO, CA 92376 The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ MARTHA J. GUZMAN, OWNER Statement filed with the County Clerk of San Bernardino on: 01/13/2020 I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code)

Published in the San Bernardino County Sentinel 01/17/2020, 01/24/2020, 01/31/2020, 02/07/2020 CNBB03202051CV

Judge Rejects Merritt's Remaining Lawyer's Assertion In Motion That His Colleague During Trial Provided Their Client With Ineffective Counsel

from page 6

should reject any suggestion that he and his colleagues carried on inappropriately during the trial.

"Once again the People are assailed with baseless attacks of misconduct," Imes said. "When they were raised, this court addressed them. I think the court is well aware of the progress of this trial and those incidents. The court did its best to address and ameliorate those instances. We do not have affidavits from any jurors that in fact their deliberations or verdicts were affected at all by the behavior of counsel from either side. There is no evidence it had any effect whatsoever before this court."

Judge Smith moved the proceedings on to his rulings with regard to Maline's motions. In doing so, Judge Smith did a walk-through of the case, giving an encapsulation of what had been presented to the jury over the January to June timeframe upon which it had based its verdict and sentencing recommendations. Thus, Judge Smith provided his reading of the evidence, revealing that in the predominant number of instances, he personally found the prosecution's theories and pre-

sentation of evidence to be more convincing and compelling than those of the defense.

In one significantly notable respect, Judge Smith's reading of the evidence clashed head-on with the theory propounded by the prosecution, that being the presentation of evidence and testimony relating to the prosecution's attempt to establish Merritt as being at the McStay residence on the evening of February 4, in particular the prosecution's assertion that the Mitchley video captured moving images of Merritt's truck leaving the McStay residence's driveway at 7:47 p.m. In an interpretation 180 degrees contrary to the prosecution's assertion that the video proves that Merritt was both at the home and that he perpetrated the murders there, Judge Smith reached the opposite conclusion. If the video indeed shows Merritt leaving the home at 7:47 p.m. when other evidence shows that there was ongoing activity involving the family during the next 41 minutes inside the house, Judge Smith said, that establishes Merritt's innocence. Judge Smith did not dwell on this interpretation at length, and he did not deal with Mer-

In nearly all other respects, Judge Smith said the prosecution's case was compelling and a reasonable interpretation of the known facts relating to the deaths of the McStays as established at trial.

In the preamble to his rulings, Judge Smith said he relied on the two California Supreme Court cases of *People vs. Pope* and *People vs. Fossel*.

rritt's repeated insistence to investigators that he had not been at the McStay home that evening.

On another relatively significant point, that relating to whether the murders of the family occurred inside the McStay residence, the Judge dissented from the prosecution's version of events. He also indicated his belief that the defense had made some headway in establishing that the alternative perpetrator of the murders they identified, another of Joseph McStay's business associates named Dan Kavanaugh, had a motive to kill Joseph McStay in the same way that the prosecution alleged Merritt had such a motive. Kavanaugh, however, the judge maintained, did not have the means or opportunity to carry out the slaughter of the family as he believed the prosecution had established in the case of Merritt. Motive must be married up with means and opportunity to constitute a provable case of actual homicide, the judge said.

Judge Smith said that McGee testified "he not only reviewed all the information from their expert but he was in constant consultation with his expert in preparing for the cross examination of Mr. Boles, both before the cross examination and during the course of the cross examination. After the testimony of Mr. Boles was concluded, he had discussions with the expert as to whether or not to call that expert as a witness, and he indicated that

man, as well as the U.S. Supreme Court ruling on *Strickland vs. Washington* for guidance.

"The standard that needs to be met to establish a new trial on the basis of ineffectiveness of counsel is the defense has the burden to establish that the attorney failed to perform with reasonable competence and performed at a level below an objective standard of reasonableness under prevailing professional standards, and that resulted in prejudice to the defendant, in that it is reasonably probable a result more favorable to the defendant would have occurred absent the deficiencies of counsel," Judge Smith said. "All those cases [Pope, Fosselman and Strickland] further indicate that an informed tactical decision by counsel does not constitute ineffective assistance of counsel even if other attorneys may disagree with the tactical decision."

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both he and the expert agreed that the expert's testimony at that point would be 'counterproductive.' And the reason it would be counterproductive was that through Mr. McGee's consultation with the defense expert, they were able to achieve far more in the cross examination of Mr. Boles than expected or, frankly, that they ever hoped to achieve. So, it's clear that, number one, Mr. McGee was certainly aware of the information. If he testified and said, 'You know what? I didn't know about all of this stuff,' that would be different. If he said, 'Yeah, I knew about it, but I didn't really understand it. I ignored it,' that would be different. If he reviewed it. He clearly understood it. He utilized it, and then further had discussions about whether or not the expert should be called. He and the expert agreed it would be counterproductive to do so. That is not only an informed tactical decision, but it is a decision made in the best interest of his client. I understand that Mr. Merritt may disagree with that informed decision and the experience of Mr. McGee and the expert. That, of course, is not the standard. Mr. McGee did address the issue of the terminating points of the phone calls as well as the beginning points with Mr. Boles on cross examination."

Judge Smith said, "So, with regard to the issue of ineffectiveness of counsel, it is abundantly clear that Mr. McGee had a commanding knowledge of the cell tower technical data and was able to utilize that to bring out various factors [and] the phone may not have been

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Further Indications Of Valdivia Graft from front page

legislators and President Donald Trump's administration in Washington, D.C.; another designated number 11, which called for raising the police chief's pre-benefit pay by \$23,160 per year from \$255,960 to \$279,120 and raising the assistant chief of police's pay by \$20,640 per year from \$234,264 annually to \$254,904 before benefits; another, designated as number 12 amending a company's commercial cannabis permit to provide a change of location; and a fourth, designated number 31, which provided for the city settling, with a payout of more than \$600,000, a long ongoing dispute with the city's franchised trash hauler over what city officials maintain has been a failure of the

trash hauler to perform in accordance with the specification in the franchise contract.

Each of those action items has an implication to suggest that Valdivia was, or is, on the take.

The *Sentinel* learned more than a year ago that Valdivia is being scrutinized by both the FBI and the San Bernardino County District Attorney's Office's Public Integrity Unit for his solicitation of money from individuals or companies doing business with the city or what has been described as his willingness to take money provided to him from such sources and then utilize his public position to influence the City of San Bernardino's official action or policy that has a direct impact on those individuals or companies in terms of their functionality within the city and potential profitability. Reports are that the money provided to

Valdivia in some but not all cases comes in the form of political donations made to his campaign war chest. In other cases, the money provided to Valdivia has not been reported as a campaign contribution. Under California law, it is not illegal for an elected official to receive campaign contributions from entities impacted by that politician's votes, as long as the money provided was not done so with an implicit or explicit understanding that the money was provided to influence the elected leader's decision or decisions in favor of the donor. There are multiple demonstrable instances of Valdivia as a councilman prior to his election as mayor having cast votes that were favorable to his campaign supporters. In California, officeholders are required to file reports of the contributions they receive from political supporters

in documents known as California Form 460s. The law does provide California politicians with the opportunity to report non-political contribution payments provided to them from any source in what are called statements of economic interest, known as California Form 700s. While an elected official can vote on an issue pertaining to an individual, company or entity that appears as a donor in that politician's Form 460s, an elected official is generally prohibited from voting on or participating in the decision-making process with regard to any matter impacting or affecting a source of income listed in that politician's Form 700s. For an elected official to omit from his or her Form 700s a source of income is a felony.

Valdivia, the *Sentinel* is reliably informed, had sought to bypass the need for the city council

voting on item number 6 on this week's agenda, which called for the city notifying Washington, D.C.-based Federal Advocates that it is going to cancel the contract the city council voted to enter into with that company, owned by Mike Esposito, on October 2, 2019. Valdivia wanted City Manager Teri Ledoux to use her administrative authority to simply cancel the contract. She, however, refused to do so, as the contract had been put in place by a binding council vote. Prior to October 2, senior city staff, including Ledoux, had evaluated the city's options for hiring lobbyists to seek assistance from California and federal officials in Sacramento and in the nation's capital. Esposito's Federal Advocates was one of four lobbying firms that indicated an interest in doing the work. The staff evaluation ranked Fed-

eral Advocates, which had the most expensive proposal to carry out the federal lobbying assignment at \$120,000 per year, behind two of the three other applicants for the post, and recommended that the city hire Townsend Public Affairs to represent it in Washington, D.C. Valdivia, however, told the council he had spoken directly with Esposito, who agreed to have his company carry out advocacy on behalf of the city for the reduced cost of \$100,000 annually. This convinced Valdivia's allies on the council – Bessine Richards, Henry Nickel, Juan Figueroa and Ted Sanchez – to ink the contract with Federal Advocates in lieu of Townsend Public Affairs. In the months since, it has been revealed publicly that the FBI is investigating Esposito, a reality that

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Adelanto Elects To Avoid Possible Federal Suit Over Discriminatory Housing Enforcement Program from page 3

to 62.4 percent. By 2010, Hesperia's non-Hispanic white population was 41.1 percent. According to Census Bureau estimates, the percentage of non-Hispanic whites in Hesperia had further declined to 35.8 percent by 2016. The number of Latino residents in Hesperia rose by 140 percent between 2000 and 2010, from 18,400 to 44,091. The number of African American residents rose by 103 percent during the same period, from 2,388 to 4,853. According to the 2010 Census, the city was 5.4 percent African American and 48.9 percent Latino."

The suit cited multiple statements by Hesperia's council members which, even if they were benignly intended, sounded bad and reflected poorly on the city.

Blewett was quoted as stating the purpose of the ordinance was "to

correct a demographic problem" and that the city needed to "improve our demographic." Blewett also stated that "those kind of people" the ordinance would target were "no addition and of no value to this community, period," and that he wanted to "get them the hell out of our town," adding "I want their butt kicked out of this community as fast as I can possibly humanly get it done." The then-mayor, Eric Schmidt, stated "I can't get over the fact that we're allowing... people from LA County" to 'mov[e] into our neighborhoods because it's a cheap place to live and it's a place to hide." He also stated that "the people that aggravate us aren't from here," and that they "come from somewhere else with their tainted history." Councilman Bill Holland made what was perhaps the most cringe-worthy remarks, saying, "We are surgically going after those elements that create an inordinate amount of problems in every single neighborhood," and "You are trying to eliminate them, you are trying to pluck them out and make them

go somewhere else." He said the ordinance's purpose was to get each landlord "to rid his rental . . . of that blight," similar to 'call[ing] an exterminator out to kill roaches, same difference.' City Councilman Mike Leonard stated that "we've had a lot of people from over the hill move up here that are not very friendly people," and "we need to work on getting them out of here." He also stated "[w]e need to get [the ordinance] going because we are falling further and further behind on our ability to cut down some of our problem areas."

The suit noted that "Captain Nils Bentsen from the sheriff's department, who later became Hesperia's city manager, was present at the hearings during which the statements described were made. Captain Bentsen and the city councilmembers described Hesperia's renters—a group in which African American and Latino individuals are overrepresented in comparison to their share of homeowners—as dangerous because they were 'antisocial' and 'victimized' homeown-

ers. According to 2016 Census estimates, 58 percent of renter households in Hesperia were African American or Latino, compared to just 44 percent of homeowner households. Captain Bentsen compared the ordinance to his previous efforts evicting people in 'a Section 8 house' where 'it took us years to . . . find some criminal charges [and] arrest the people.'

In the face of the federal government's allegations, Hesperia city officials say they will fight the lawsuit in court, even if it requires the expenditure of considerable taxpayer dollars to do so.

In an effort to bypass the embarrassment and cost now being borne by Hesperia, Adelanto city officials opted last week, on January 8, to jettison that city's crime free housing ordinance.

City Attorney Victor Ponto said the city had essentially cloned the ordinance enacted in 2017 from ones existing elsewhere, and he used the term "cookie cutter regulations" in making that description.

After taking up the matter, the council, consisting of Mayor Gabriel

Reyes, Councilman Gerardo Hernandez, Councilman Ed Camargo, Councilwoman Joy Jeanette and Councilwoman Stevevonna Evans, voted unanimously to rescind the city's crime free rental housing program.

Ponto said the city had not been enforcing the ordinance. Nevertheless, he said the city could be sued and dinged for a good amount of money if it left what is deemed an unconstitutional law on its books. "It's not a matter of if we're going to get sued," Ponto said. "It's when."

Ponto's prediction was based on the presence of lawyers from the Victor Valley Family Resource Center and the American Civil Liberties Union of Southern California being present at the January 8 meeting. Both of those groups had been instrumental in the civil action that resulted in Hesperia's 2017 move to make its crime free housing program voluntary. As a result, the Victor Valley Family Resource Center and the American Civil Liberties Union of Southern California collected \$487,000 in legal fees from Hesperia.

Some individuals,

including Blacks and Latinos, while acknowledging that officials had perhaps been a bit heavy-handed in enforcing the program in Hesperia, said that it nevertheless had a salubrious impact in reducing criminal activity in certain neighborhoods. Like Hesperia, where the San Bernardino County Sheriff's Department is that city's police department, Adelanto also has sheriff's department deputies and higher ranking officers handling its law enforcement duties under contract.

-Mark Gutglueck

Project Phoenix Groundbreaking from front page 3

2011 must be utilized only for the purpose that bondholders were told the money would be applied toward. The city then used the locally composed bond oversight board that was formed as a consequence of the state legislation to recommit the bond money to the Phoenix project.

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Judge Evinces Novel Interpretation Of Video Evidence Relating To Merritt's Truck & His Presence At The Alleged McStay Family Murder Scene

from page 14

where the prosecution was claiming. Mr. Boles never testified that Mr. Merritt was right at the gravesite. The effect of all of that testimony was never to say, 'It proves the defendant was right at the gravesite,' but only to show that on February 6, a day-and-a-half after the family disappeared from Fallbrook, the defendant was in the general area where the bodies were buried. On February 6, Mr. Merritt was in that general location and he denied being in the upper desert. The investigators when they interviewed him asked him if he had been in the upper desert at that time, and he said, 'No.' Then they said, 'Well, if you had been in the upper desert at that time, where might you have gone?' And he said, 'Well, if I were in the upper desert, I either would have been at my sister's or at my brother's.' But he was clear, all the way through, that no, he wasn't there. When his sister Juanita was interviewed in 2014 by investigators, she was asked about whether or not Mr. Merritt had visited her there. In 2014 she's not going to specifically remember the date of February 6, 2010, more than four years earlier, but generally asked, 'Did he come up and visit you there?' her answer was, 'No,' that he hadn't been there for more than five years, that anytime she wanted to see him, she would have to come down to Rancho [Cucamonga] to see him, that he did not visit her in the Oro Grande area."

Judge Smith pronounced, "The court finds, number one, there was not ineffective assistance of counsel. To the contrary, Mr. McGee's representation on

that issue, on all of the issues, was at the higher end of representation. He demonstrated a high level of knowledge and command of the subject matter, and he was very forceful in his presentation of the evidence, arguing forcefully that the evidence he was bringing forward demonstrated that the position of the prosecution was inaccurate or wrong. Ultimately, of course, the jury reviewed that, along with all of the other evidence, and ultimately decided that evidence did prove guilt beyond a reasonable doubt. The court finds that the representation was not ineffective. The court also finds that there were additional records that were accessed by the prosecution, by Mr. Boles. That the defense did not have access to and that was the basis for all of the maps, as I indicated, that was not true. The defense ultimately was given access to the information for the critical date of February 6. They had the opportunity to discuss that with their expert and did, in fact, utilize that information in the cross examination of the expert. So the court finds no discovery violation and no due process violation."

Judge Smith said, "There are some additional things that by themselves would be inconsequential but when considered with the other evidence tends to be part of the totality of circumstances that does indicate guilt. The defense did present a very vigorous defense and did challenge all of the issues that I just discussed."

The Judge continued, "The second prong of the defense evidence was to attempt to show that Mr. [Dan] Kavanaugh was at least [in the] same position and had the same motivations that the prosecution alleged that Mr. Merritt had. Mr. Kavanaugh had set up the web page for the business. He was doing web page work and maybe getting a percentage of the profits, and Joseph was also phasing out Mr. Kavanaugh, just as he was

phasing out or intended to phase out Mr. Merritt, and after the disappearance of the McStays, Mr. Kavanaugh benefited financially from some of the subsequent work that was done. And significantly, ultimately it was Mr. Kavanaugh who sold the business and retained the profits, the proceeds from the sale of the business. So, a compelling case was made that Mr. Kavanaugh had at least the same motivations, was at least in the same position as Mr. Merritt. However, there was no credible evidence connecting Mr. Kavanaugh to the commission of the crimes. There is no credible evidence connecting Mr. Kavanaugh to the McStay residence on February 4 or 5. There was no credible evidence connecting Mr. Kavanaugh to the gravesite. There is no credible evidence connecting Mr. Kavanaugh to the Trooper at the border. And there was additional evidence that indicated that in fact Mr. Kavanaugh was in Hawaii at the time of the homicides. So the evidence did not indicate or did not suggest that Mr. Kavanaugh was likely the killer, and did not, in the court's view, raise a reasonable doubt as to whether it was him or Mr. Merritt who was the killer. That evidence still served an important point in the defense, which was a valid point, because that evidence demonstrated the presence of motive alone is not sufficient to prove guilt. The evidence did show that Mr. Kavanaugh was basically in the same situation as Mr. Merritt in terms of the finances, and yet the evidence was clear that there was no connection of Mr. Kavanaugh to the crimes, and that he was likely in Hawaii. So, the presence of that motive was insufficient to demonstrate Mr. Kavanaugh could have been involved in the crime. That was important for the defense to be able to say 'Even if you buy the prosecution's argument as to the financial motivations' – even though they disagreed with it, but if you accept

it – 'that's not enough to prove guilt.' And that's true. It's not. It takes the additional evidence to connect the defendant to the commission of the crimes."

In reviewing the evidence in the case Judge Smith said he recognized that science has essentially deemed three levels or categories of DNA presence, those being what is left by a major, a minor and a trace contributor. In discussing Merritt's DNA being in the Isuzu Trooper, Judge Smith acknowledged that Merritt's DNA presence fell in the trace category, and that he had said and there was evidence to suggest he was a passenger in the vehicle several weeks prior to the disappearance of the McStay family. The judge also acknowledged that according to some experts, if Merritt had been the last person to drive the Isuzu Trooper when it was left near the Mexican border in San Ysidro, he could have been a major DNA contributor.

Nevertheless, the Judge said, Merritt's DNA presence in the vehicle was in some fashion indicative or supportive of the prosecution's theory. And he was dismissive of the defense's suggestion that the DNA found on the steering wheel qualified as contact or transfer DNA, which would have been put there as a consequence of Joseph McStay having touched Merritt as perhaps in shaking hands with him when they parted during their meeting in Rancho Cucamonga in the afternoon of February 4, 2010.

With regard to the "trace showing" of Merritt's DNA in the vehicle, Judge Smith said, "There are few actual cases – forensic cases – where transfer DNA is noted and has been demonstrated. There's a lack of any foundation to support transfer DNA," the judge said, though he said the defense had made an "argumentative inference" to suggest that had occurred.

Judge Smith further

stated that DNA gathered from the graves holding the family was insufficient to produce a usable DNA profile for the purposes of determining the identities of the contributors of those DNA fragments, even if they were, as the defense suggested, the actual killers.

Judge Smith then iterated his theory in the one area wherein his reading of the evidence departs radically from that of the prosecution.

"Much was made of the Mitchley video of a truck leaving the McStay residence around either 7:15 or 7:45 p.m. and whether that was Mr. Merritt's truck or not," Judge Smith said. "The Mitchley video is of limited significance. The Mitchley video is not a complete surveillance of all of the activity that might have been in that area from February 4 and February 5. It only shows a few segments. Significantly, it does not show the truck arriving. It doesn't show any other vehicles, either before or after the truck. So, it's of relatively limited significance. If it is the defendant in his truck leaving the house at 7:45 [p.m.], and if the evidence is that the McStays were still in the residence until 8:28 [p.m.], that evidence would be exculpatory, but the defense claimed it was not his truck. And if it was not his truck, and a truck not his truck is leaving the area before the McStays are killed or they were still in the residence with activity going on in their residence after that truck leaves, the fact that it is not his truck does not have any significance."

With regard to whether the vehicle seen on the Mitchley security video pulling out of the McStay residence driveway and leaving is Merritt's truck, Judge Smith said, it is Dr. Leonid Rudin, arguably the world's leading photogrammetrist who had started out as a prosecution witness and eventually rendered a professional opinion at odds with the prosecution's theory that the image on the Mitchley

video matched Merritt's truck, who offered the "best evidence," which was that the truck was excluded as being a match for Merritt's truck.

Judge Smith said, "The defense brought up various holes in the prosecution's case, various unanswered questions. The defense pointed out that the cause of death was multiple significant blunt force trauma to the skull of each of the victims and that would have resulted in significant bleeding of each of those victims, which would have resulted in a very bloody crime scene. And certainly, at the McStay residence there was no evidence of such a bloody crime scene. There was no evidence of a cleanup and although people can make superficial attempts at cleanup, it is rarely if ever successful in being complete. So, that leads to a conclusion that those blunt force traumas causing that extensive bleeding would not have been inflicted inside the residence. That then raises the question, if that didn't happen inside the residence, when and where did it happen, and there was no answer to that. Clearly, that is a potential hole in the prosecution evidence. It is an unanswered question. Then, of course, there was the additional issue: If they were taken and killed on February 4 or early February 5, or just taken late February 4/early February 5 but not buried until February 6, which is the prosecution evidence based on the cell phone data of Mr. Merritt being at the gravesite area on February 6, where were they kept between that time-frame? Again, there's no answer for that. Those are significant questions. Those could be considered significant holes in the prosecution's case, and without knowing that, a jury could say that was sufficient for reasonable doubt and vote not guilty, or the court, sitting as the 13th juror could say that raises a reasonable doubt.

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**With Questions
Swirling Over Alteration Of Video Evidence, Deputy Prosecutor Ducks Out Of Murder Case Preliminary Hearing**

from page 7

or in a reasonably secure place in the front of the vehicle, with the ammunition for the gun in the opposite location, either the trunk or in the vehicle, which also must be locked.

While many of those who carry firearms in their vehicles consider having them unloaded to be impractical, carrying a loaded firearm in a car or truck can be charged as a misdemeanor if discovered by a law enforcement officer. A second such offense can be ratcheted up to a felony.

The use of an illegally carried gun for self-defense is subject to a myriad of conditions, circumstances and considerations. A prosecutor is not bound to charge an individual in possession of a loaded firearm with a crime. Further, that an individual was in defiance of the law by illegally carrying a firearm in a vehicle could be deemed irrelevant as to whether that individual's claim of self-defense in using the firearm is valid. Under California law, self-defense deals with whether an individual reasonably believed he or she was in imminent danger of great bodily injury or death, and that the use of deadly force was necessary under the circumstances. Such evaluations are done on a case-by-case analysis.

In the immediate aftermath of the incident, there was criticism of the decision not to arrest Opmanis, whose name was unknown to the general public. In response, sub rosa statements emanating from the sheriff's department in defense of the decision emphasized that the video made a clear demonstration that the "victim," as Opmanis was referred to, was being aggressively as-

saulted in what appeared to be an unprovoked attack.

Sometime after July 12, however, the sheriff's department's view of the matter began to evolve. A significant change came after Homicide Sergeant Joseph Steers was detailed to the case in support of Ogaz and Gibilterra.

On Friday, August 9, 2019, Opmanis was requested by the sheriff's department to meet with homicide detectives to provide an additional statement. When he voluntarily complied and both made statements at a variance with what he had said earlier and reconfirmed statements the investigators believed clashed with other evidence they had gathered, they arrested Opmanis.

That arrest was done relatively quietly. Whereas the department issued a statement the day after the shooting, it waited 13 days to publicly disclose that Opmanis had been arrested. On August 22 the sheriff's department put out a press release that said Opmanis had been subjected to follow-up questioning on August 9. "Following the interview, detectives determined Opmanis' statements were inconsistent with the evidence gathered and placed him under arrest for the murder of Sammy Davis," the press release said. Of note was that the August 22 sheriff's department statement referred to Davis as the "victim," while referring to Opmanis as the "suspect," a reversal of the department's ranking of the participants in the shooting made on July 12.

Opmanis's bail was set at \$1 million and he has remained in custody since his arrest.

Deputy District Attorney David Rabb is prosecuting the matter in which Opmanis is charged with PC 187, murder; PC12022.53(B), unlawful use of a firearm; PC12022.53(C), unlawful discharge of a firearm; and PC12022.53(D), unlawful discharge of a firearm causing death.

Opmanis was brought to court yesterday, January 16, for his preliminary hearing. Prior to the hearing it appeared that Deputy District Attorney Rabb was purposed to utilize the video and other evidence to convince Judge Charles Umeda to bind Opmanis over for trial. Rabb was present in the courtroom prior to the hearing but when the Opmanis matter came up, he ducked out and Deputy District Attorney Thomas Perkins appeared for him. Perkins told the court that the prosecution is not prepared to proceed at this time, which ran counter to a previous representation made by Rabb that the prosecution was prepared move ahead with the preliminary hearing on Thursday. Judge Umeda made a point of asking Deputy District Attorney Perkins about the reason for the delay. Perkins' response was less than clear. Judge Umeda continued the preliminary hearing until January 27.

What is known is that copies of the video have been making the rounds and have been subject to close scrutiny and analysis. Of note is that the removal of the 9:13:56 p.m. to 9:14:08 p.m. portion of the video, upon which the initial statements of sheriff's department personnel asserting that the video clearly demonstrated that Opmanis was under a violent attack, is likely to help rather than hurt the prosecution and hurt rather than help the defense. But with the doctoring of the video to remove that passage now becoming more generally recognized, the question is who was responsible for the alteration, and was it done with the intention of crippling the defense.

Prosecutors are required to provide to the defense any exculpatory – meaning exonerating – evidence turned up in their investigations. Failure to provide any such potentially exonerating evidence is known, in legal parlance, as a Brady violation.

On January 16, Rabb was faced with media

presence in Umeda's courtroom as the Opmanis matter was about to get under way in earnest, with suggestions of evidence tampering in the prosecution's favor hanging over the case. Rabb's inexplicable departure before the preliminary hearing began, followed by Deputy District Attorney Perkins' request for a continuance, sparked questions about whether Rabb had known about the alteration previously and whether he knowingly intended to proceed toward trial using evidence he understood to be doctored.

The *Sentinel* sent to the district attorney's office, through its official spokesman, Michael Bires, a series of questions relating to the alteration of the video, including the rational for piece-mealing it and deleting specific sections.

In particular, the *Sentinel* inquired if Rabb was fully conscious of the degree to which the video from Goodwin's Market has been fragmented and that portions of the video from Goodwin's Market are missing altogether. The *Sentinel* also sought to determine if Rabb realized that the crucial 12 second segment of the video between 9:13:56 p.m. and 9:14:08 p.m. just prior to the shooting is missing, and whether he considers the 12 seconds of the video missing between 9:13:56 p.m. and 9:14:08 p.m. to be of especial significance in ascertaining Opmanis's culpability in the fatal shooting of Sammy Davis.

Bires was unprepared, he indicated, to say whether the video from Goodwin's Market arrived at the district attorney's office as one continuous piece, without having been fragmented and without multiple passages, including the portion between 9:13:56 p.m. and 9:14:08 p.m., missing. Nor could Bires say with definitude if Deputy District Attorney Rabb personally altered the video or requested that some other party alter it before it was provided to Opmanis's defense counsel.

Bires did say, tentatively, that he had not verified the authenticity of the video that is now being passed around. He asserted, "It did not come from the district attorney's office. It didn't come from the public defender."

Opmanis is represented by the public defender's office.

Despite Bires' assertion, the *Sentinel* has verified that the altered video was provided to Opmanis's counsel by the district attorney's office.

Bires sought to suggest that the fragmentation of the video footage was the consequence of the Goodwin's Market security system employing a motion activated video surveillance system.

"It is not confirmed, but if you are asking why this video is [fragmented], this is a move-

ment-activated video, which explains the multiple chopping up of segments," Bires said.

According to Clear Protection Services, the video surveillance system in place at Goodwin's Market does not use motion-activated cameras.

Bires, while acknowledging that the altering of the video would constitute "a huge violation" and "that's tampering with evidence," reiterated that the alterations did not originate in the district attorney's office. Moreover, he suggested that despite the timestamp on the video itself, the assertion that the video had been altered was not steeped in fact but rather opinion. "There's no way I'm going to give you any response on that," he said. "I'm not going to comment on your feelings and your viewpoints."

**As 13th Juror,
Judge Says He Is
Convinced Beyond
A Reasonable
Doubt That Merritt Killed The
McStay Family**

from page 16

tion for a new trial on the grounds of the insufficiency of the evidence is denied."

By the time Judge Smith had made his rulings, five o'clock had been eclipsed. He said he believed it inadvisable given the lateness in the day to try to slog through the items yet needing be dealt with, including considering an automatic motion for a reduced sentence and hearing victim-impact statements before moving on to the decision of following or deviating from the jury's recommendations in pronouncing sentence. When Smith brought up continuing with the process until 6 p.m., that prompted Joseph McStay's brother, Michael, to yell that he did not care if the proceedings continued until 10 p.m., followed by a cacophony that the sheriff's department bailiffs in the courtroom were obliged to dampen. Deputy District Attorney Melissa Rodriguez informed Judge Smith that there were individuals who had made a special effort to travel to the courthouse that day to provide those statements. Judge

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Investigation Insurance: Top Cop Raises Buy Mayor Assurance His Affairs Won't Get PD's Scrutiny from page 15

was given particular emphasis when Esposito's home and the offices of Federal Advocates were searched pursuant to a federal search warrant on January 2. For that reason, Valdivia wanted Ledoux to quietly end the city's relationship with Federal Advocates, given the commonality of the FBI's interest in Esposito and him, a circumstance and coincidence Valdivia would prefer the public did not take note of. Without much ado, the council on Wednesday voted to give Federal Advocates the requisite 10-day notice to terminate the contract. There was, nevertheless, some grumbling from city staff about the way in which Valdivia in October violated the city's purchasing protocol to award the contract to the third-ranked vendor over the first-ranked vendor at twice the price, and how neither the city manager nor city attorney spoke up at the time about what was at least an inappropriate and possibly illegal negotiation for a city contract after the deadline for receiving proposals closed and bids were received. "All bidders should have had the same chance to re-

negotiate," one city employee told the *Sentinel*. "The city manager or the city attorney should have recommended rejecting all proposals and starting the process over. The very reason purchasing protocols are in place is to prevent what happened."

After acting Police Chief Eric McBride was given an automatic annual 3.5 percent raise in August that took his annual salary to \$255,963.80, Ledoux subsequently brought forth a proposal to confer on McBride and acting Assistant Police Chief David Green further raises. On November 6, that initiative had been solidified to add another \$23,160 to McBride's \$255,960 pay before benefits, zooming his salary to \$279,120 per year, and to increase Green's \$234,264 annual salary before benefits by \$20,640 to \$254,904, and was brought before the city council for a vote. With the council majority reasoning that the city's financial circumstance did not permit the city to be making such payroll increase commitments, the motion to give McBride and Green those raises failed, 2-to-4, with councilmembers Fred Shorett, Jim Mulvihill, Sandra Ibarra and Juan Figueroa in opposition and councilmen Ted Sanchez and Henry Nickel in support. This week, however, the item was revived as item 11 on the agenda and again brought before the city

council. In it, the identical increases of \$23,160 to McBride's \$255,960 salary to bring it to \$279,120 per year before benefits and to increase Green's \$234,264 annual salary before benefits by \$20,640 to \$254,904 were proposed.

Green was the member of the department whom then-Councilman and Mayor-Elect John Valdivia, just eight days after his victory over incumbent Mayor Carey Davis, had contacted on November 14, 2018 when he involved himself in what was a messy legal situation that was rife with political hazard. Valdivia called to report that he had been on the premises of what the city has charged is an illicit marijuana dispensary located at 1435 North Waterman Avenue roughly an hour-and-a-half to two hours prior to an unidentified gunman coming into the business and shooting an employee in the leg before making off with \$19,600 in cash. Valdivia used his status as a councilman and the soon-to-be mayor to arrange for Green to handle the investigation into the matter. For the official record that went into the police report, Valdivia said he had been there to "meet-and-greet" the owner of the building and then go over "business investment and other opportunities" with him. Over the previous nine months, the dispensary at 1435 North Waterman

had been the site of three police department raids, out of which two felony charges against the operators had been issued by the district attorney's office. In his statement to Green, Valdivia insisted that he was in no way involved in the robbery that took place after his departure from the scene. A report on the matter was sent to the district attorney's office, which has not charged Valdivia with any crime.

The increase to the police chief's salary and assistant police chief's salary was opposed by councilmen Mulvihill and Fred Shorett, Valdivia's major rivals on the council. Councilmembers Sanchez, Ibarra, Figueroa, Nickel and Richard approved the item.

Wednesday night the city council was scheduled to consider a request by a company Nibble This, LLC, which is owned by Kater Bilow and Raquel Origel, to relocate a business permit for a so-called micro business offering marijuana-related products from the address at which the company was granted a permit to operate last year, 4130 West Hallmark Parkway in San Bernardino, to another location at 390 North H Street in San Bernardino.

After years of resisting the concept of permitting medical marijuana-related operations to set up shop in San Bernardino, city officials,

after the success of local initiatives calling for the permitting of marijuana dispensaries and the statewide passage of Proposition 64 and the Adult Use of Marijuana Act in 2016, relented, seeking to establish a regime under which marijuana and cannabis product cultivators, processors, manufacturers, wholesalers and retailers can do business. After a tortuous application process, Mayor Valdivia and the city council on February 21, 2019, awarded 16 commercial cannabis business permits covering several different license types. Nibble This, LLC was awarded a commercial cannabis business permit for a cannabis microbusiness to be located at 4130 West Hallmark Parkway. A cannabis microbusiness is considered to be a plum commercial permit in that it allows the licensee to cultivate up to 10,000 square feet of marijuana plants, manufacture and distribute refined marijuana products, and act as a retailer.

To obtain a commercial cannabis license in San Bernardino, the operator is required to, among other things, demonstrate that it has secured the property where the business is to be located, either through ownership outright by title or through a lease.

On November 7, 2019, Nibble This submitted a request for a zoning verification letter for an

alternate location at 390 N. H Street. On November 18, 2019, Nibble This was issued an approved zoning verification letter for 390 N. H Street. On November 19, 2019, Nibble This submitted a commercial cannabis business application, 19-0002, seeking a change in location from 4130 West Hallmark Parkway to 390 North H Street. In the process it was revealed that Nibble This had never secured or otherwise had possession of or the right to occupy the property at 4130 West Hallmark Parkway. This brought into question how it was that Nibble This had obtained the cannabis microbusiness permit it has in the first place. Since before the awarding of the 16 commercial cannabis business permits on February 21, 2019, there have been questions about the fashion in which the city conducted the application and selection process for the businesses eventually selected to achieve licensing. Charges of favoritism have permeated the process. Since last year, without any explanation of why, Valdivia has surrendered his gavel and duties as the council's presiding officer whenever issues pertaining to the city's commercial cannabis permitting process have come before the council, sparking widespread speculation that he has

Continued on Page 19

Merritt's Irresponsible Narcissism Destroyed Countless Lives, Joseph McStay's Step-father Tells Convicted Murderer from page 17

Smith then consented to allow Patrick McStay, Joseph McStay's step-father, to make his presentation because he was scheduled to leave California on Saturday.

"You have been convicted of brutally killing my oldest son, my daughter-in-law and my two innocent little grandsons," Patrick McStay said from a lec-

tern facing the front of the courtroom that was placed behind and slightly to the left of where Maline and Merritt were seated at the defense table, which also faced the front of the courtroom. "Joey, Summer, Gianni and Joey, Jr. did nothing to you. They welcomed you into their lives and home. My son Joey did nothing but help you and your family."

As Patrick McStay continued with his comments and it became clear that he was being directly addressed, Merritt pushed back from the defense table and turned slightly to his left to half-face the father of the man he is convicted of

killing. "What did you do in return after all the help Joey gave you and your family throughout the years, including to make sure your children and their mother would not go hungry and could pay bills while you were in jail twice in 2009?" Patrick McStay asked, and then answered, "Joey gave the mother of your children, Catherine Jarvis, money to buy food and pay bills, make sure your family didn't have to suffer because of your actions which put you in jail. Joey accepted the responsibility, something it seems you never did. He did everything he could to help your

family and you. And how did you repay him? By brutally killing him, his wife Summer and his defenseless infant sons, four-year-old Gianni and two-year-old Joey Jr. So, because of your actions, and no one else's actions, you destroyed the lives of many other family members and friends. I believe this to be because of your own narcissism and psychotic actions, thinking of no one but yourself and not caring who you hurt or destroy. You had no concern for my son Joey, his brother Michael, his mother Susan, aunts, uncles, cousins and many other family members, along with countless

friends and associates. You also certainly had no thoughts, cares or concerns for your own daughter and son when you made your daughter and son the children of a ruthless mass murderer, something your children will never escape and they have to live with and think about for the rest of their lives. Your own children are just more innocent victims, adding to the many others whom you place yourself above and you have no regard for. You and no one else can be blamed, as you have proven this to the world."

Patrick McStay said, "I hope you burn in hell, but I will pray for your

family and your children, as they are to me all just more innocent victims, of which there are many, that you have absolutely no regard or caring for when you murdered my family and caused such pain and suffering that will last forever."

The proceedings, including further victim-impact statements, a ruling on the mandatory sentence reduction motion and Judge Smith's ultimate imposition of sentence, are to resume in Department S-1 of the San Bernardino Justice Center at 8:30 on Tuesday, January 21.



County Wildlife Corner

Southern Honeysuckle



Southern honeysuckle is a dicot angiosperm in the caprifoliaceae (honeysuckle) family that is endemic to California, where it is known from several areas in mountain and coastal habitat, particularly chaparral. It is a vining shrub, somewhat woody at the base, and generally climbs or reclines on what are mostly sturdier shrubs for support.

The caprifoliaceae is a rather small family of about 250 species

restricted to northern temperate regions. Recent taxonomic changes prompted M. L. Charters, one of Southern California's leading botanists, to characterize the caprifoliaceae as "one of the most confusing families I have encountered."

Known commonly as the southern or chaparral honeysuckle, its scientific name is *lonicera subspicata*. A straggling evergreen shrub, its leaves are opposite, widely elliptic to round-ovate, entire-margined, subglaucous to whitish-pubescent beneath, to 1-1/4" long, and sometimes revolute. The upper pairs of leaves are not fused around the stem as they are in *lonicera interrupta*. The flowers exist in small whorls, or clusters, along a spike that is often glandular-hairy



and 3/4" to 4-1/2" long. The calyx tube is ovoid, very short, and minutely 5-cleft. The corolla is cream-colored to yellowish, two-lipped with the upper lip 4-lobed and the lower lip a single lobe, and often hairy. There are 5 stamens with the filaments pubescent at the base, and the style, stigma and stamens are strongly exserted. The fruit is a yellow or reddish berry about 5/16" in diameter.

Members of the honeysuckle family characteristically have flowers

with bilateral symmetry, tubular corollas with five lobes, five stamens and an inferior ovary that becomes a juicy berry. Leaves are opposite. The genus *lonicera*, which includes the ornamental honeysuckles, is the best-known genus in this family.

Southern honeysuckle is quite common on dry slopes below 5,000 feet in elevation on chaparral slopes and shaded woodlands, blooming from April to June. It is easily recognizable as a honeysuckle with leaves that are 3-4 times longer than wide. The *lonicera subspicata* var. *subspicata*, denudata's leaves are less than or equal to twice as long as wide.

Lonicera subspicata reaches a length of anywhere from three feet to eight feet.

Among the butterflies, moths and other insects likely or confirmed to be hosted by the Southern Honeysuckle are the ashy pleromelloida moth, the pleromelloida *cinerea*; the owl moth, *behrensi* *conchiformis*; the variable checkerspot butterfly, *euphydryas chalcedona*, the white-lined sphinx, *hyles lineata*, the genista caterpillar, *uresiphita reversalis*; the corn earworm moth, *helicoverpa zea*; the canary *ypsolopha* moth; *ypsolopha canariella*; the hatched arches moth, *melanchra adjuncta*; the fall webworm, *hyphantria cunea*; the geranium plume moth, *amblyptilia pica*; the orange tortrix moth, *argyrotaenia franciscana*; the omnivorous looper, *sabulodes aegeotata*; the black form *concerta* moth, *plerom-*

elloida conserta; the tetracis *mosesiana*; the ero *radiosaria*; the sympistis *ragani*; the pandemis leafroller moth, *pandemis pyrusana*; the western



avocado leafroller moth, *amorbia cuneana*, the perittia *passula* moth; the euceratia *securella* moth; and the euceratia *castella* moth.

From <https://calscape.org>, www.calflora.net and <https://thenaturecollective.org>

Signs Mounting That SB Mayor Is On The Take

from page 18

an undisclosed financial interest in one or more of the cannabis-related business operations in the city, and that behind the scenes he has been involved in what many consider to be the favorable treatment accorded to some of those business applicants and the resistance that their competitors or would-be competitors have experienced in their efforts to achieve licensing in San Bernardino.

The request by Nibble This was not heard on Wednesday, after it was pulled administratively until February 5.

On Wednesday, the council took up item number 31, pertaining to reaching a "settlement" with Burrtec, the city's franchised trash hauler, over the dispute the city has with the company relating to recurrent resident complaints that the company is not abiding by the terms of its franchise contract.

The consent calendar

is reserved for what are deemed noncontroversial items. In recent weeks and months, Valdivia has been pressuring the city to reach an accord with Burrtec. Burrtec, through its ownership, is one of Valdivia's major campaign contributors. Until 2016, the City of San Bernardino had its own sanitation department, which was responsible for trash hauling in the city. In 2015, after declaring its intention to dissolve its sanitation division, the city conducted a competition to settle on a franchise refuse hauler. That competition narrowed itself to Burrtec and Athens. Burrtec failed to comply with his request, and certainly could not provide him with money in any form while the competition for the franchise was yet ongoing. Ultimately, Valdivia advocated on behalf of Burrtec.

The staff report for item 31, sent to the city council by Ledoux and authored by acting Public Works Director Alex Qishta, states, "A series of disputes have arisen between the city and Burrtec related to performance by the parties of their respective obligations under the franchise agreement and under related undertakings. In April 2019, the city contended that Burrtec failed to perform its obligations related to sweeping city park parking lots in accordance with Section 11.8.4 of the franchise agreement and assessed monetary penalties against Burrtec totaling \$594,000 in accordance with the franchise agreement during the 2015 competition.

Qishta's report to the council for Wednesday night's meeting continues, "The city and Burrtec now desire to resolve the disputes once and for all in order to avoid the expense and delay of adversarial proceedings, and without any admission of liability whatsoever, and enter into this agreement for that specific purpose. With regard to the city's dispute that Burrtec failed to perform its obligations relating to sweeping city park parking lots in accordance with Section 11.8.4 of the franchise agreement and assessed monetary penalties against Burrtec totaling \$594,000 in accordance with the franchise agreement, the settlement of that dispute will amount to half of the \$594,000, totaling \$297,000. Burrtec contended that the city has failed to compensate Burrtec for additional work authorized by the city and claims that the city presently owes a total of \$927,194.06. The settlement of that dispute will be resolved in the total amount of the dispute as all of the additional work that was performed by Burrtec was in fact authorized by the city."

On numerous occasions, city residents have come forth during council meetings, lodging complaints about Burrtec's service level with regard to trash pickup as well as failure to sweep streets for months at a time. Burrtec, as had Athens, offered to provide street sweeping as a bonus provision of the service level it was offering to obtain the franchise contract during the 2015 competition.

According to Qishta, "The city and Burrtec now desire to resolve the disputes once and for all in order to avoid the expense and delay of adversarial proceedings, and without any admission of liability whatsoever, and enter into this agreement for that specific purpose. With regard to the city's dispute that Burrtec failed to perform its obligations relating to sweeping city park parking lots in accordance with Section 11.8.4 of the franchise agreement and assessed monetary penalties against Burrtec totaling \$594,000 in accordance with the franchise agreement, the settlement of that dispute will amount to half of the \$594,000, totaling \$297,000. Burrtec contended that the city has failed to compensate Burrtec for additional work authorized by the city and claims that the city presently owes a total of \$927,194.06. The settlement of that dispute will be resolved in the total amount of the dispute as all of the additional work that was performed by Burrtec was in fact authorized by the city."

According to Qishta, "The city's final obligation to Burrtec's dispute will be in an amount no more than \$630,194. This is a result of crediting the \$297,000 towards the \$927,194.06 that the

city owes to Burrtec Waste Industries, Inc."

City employees told the *Sentinel* that pressure Valdivia was applying was instrumental in having the sweeping and payment disputes between the city and Burrtec settled on terms favorable to the company.

Scott Olson, one of Valdivia's supporters, told the *Sentinel* that the investigations into the mayor are "going nowhere." He attributed the complaints alleging wrongdoing on Valdivia's part that have gone to federal and local law enforcement agencies and prosecutors as efforts to harm Valdivia politically. He identified Valdivia's former campaign treasurer, Robert Rego, as the source of at least some of the information pertaining to Valdivia that had been provided to investigators.

Olson said that Valdivia had fired Rego as his campaign treasurer, but did not specify whether that had occurred before or after Rego had begun cooperating with the FBI.

-Mark Gutglueck

California Style Turtle Men



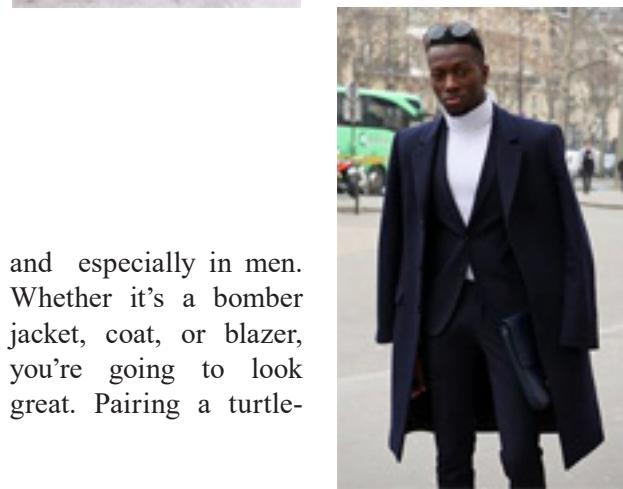
only casually. It can also be dressed up. There's also something nostalgic about the turtleneck, kind of mod-like. It's a standout piece by itself,



Recently, I'm seeing men pop up in turtlenecks. Wow! They sure look good in them, too. There's something minimal yet classic about the turtleneck. This is not a piece to be taken



and especially in men. Whether it's a bomber jacket, coat, or blazer, you're going to look great. Pairing a turtle-



Seeing 29 Palms Project Phoenix Plan Through To Construction Phase Required Guts, Determination & Legal Savvy To Keep State From Destroying It As A Re-development Project *from page 15*

Subsequently, however, the state Department of Finance used its authority to disallow the recommitment. In response, the city appealed and when that appeal was turned down, filed legal action in Sacramento Superior Court, the venue where the legislation required any litigation pertaining to cities' use of redevelopment money had to be filed. The case was heard by Sacramento Superior Court Judge Michael P. Kenny. Muñoz asserted in filings with the Sacramento Superior Court that the non-taxable bonds issued in 2011 created specific obligations between the city, as the issuer, and the bond purchasers, and as such are

enforceable obligations and any use of the money for a purpose other than what the city had specified in marketing the bonds to the bond buyers would constitute fraud. The California Department of Finance in December 2013 told Kenny that the Twentynine Palms Redevelopment Agency, like several others, "rushed to encumber future tax increment revenues" ahead of its legislated demise in December 2011. The department alleged that in March 2011, Twentynine Palms "conceived, authorized, issued and sold" \$12 million in tax allocation bonds for the Project Phoenix downtown development and an affordable housing

plan without contracts to build or a definite plan for spending the proceeds."

Ultimately, however, Kenny ruled against the Department of Finance in April 2014 and granted the petition for a writ of mandate on behalf for the city of Twentynine Palms as successor agency, allowing the city to utilize the bond money for the fulfillment of Project Phoenix. In June 2014, the Department of Finance filed an appeal of Kenny's ruling. The Department of Finance suffered multiple setbacks with regard to several cities' efforts to control the spending of redevelopment agency money appropriated in 2011. On May 14, 2015, the department sent a letter to several cities, Twentynine Palms among them, announcing it would no longer oppose those cities' moves to preserve their last remaining redevel-

opment agency projects.

As it is now formulated, the downtown rejuvenation project will cost \$21 million and will establish on the property at Twentynine Palms Highway and Yucca Avenue a "pocket Park," from which a paseo, or walkway, will wend to what is to become the Twentynine Palms Community Center, a cultural center and the new Joshua Tree National Park Visitor Center. Other elements of the project include specific infrastructure and utility improvements.

The first phase of the undertaking will involve the construction of sewage lines, leading from downtown businesses to a package treatment plant, and the undergrounding of utility lines. In this way, the project will begin the process of bringing Twentynine Palms into the 21st Century. At pres-

ent, Twentynine Palms and Yucca Valley are the only two of San Bernardino County's municipalities which do not have sewers and wastewater treatment plants.

Yucca Valley is now in the process of constructing the first phase of such a system. The sewage lines and the package treatment plant are Twentynine Palms first move toward creating such a facility.

By 2021, work on the project's second phase, the construction of the community center, is to begin. By 2022, work should start on the national park visitor, to be followed by the initiation of the project stage relating to the cultural center.

At the groundbreaking, Mayor Joel Klink alluded to the state's effort to strangle Project Phoenix in the crib before it could grow toward maturity.

"There were obstacles



"A turtleneck is about sophistication." Dwyane Wade

