

OFFICE OF THE DISTRICT ATTORNEY

December 4, 2014



REPORT ON THE JULY 12, 2013
SHOOTING OF DANIEL HOUFEK
BY VENTURA COUNTY SHERIFF'S DEPUTIES
DANIELLE DELPIT AND BRIAN DENT

GREGORY D. TOTTEN
DISTRICT ATTORNEY
COUNTY OF VENTURA

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS	3
	A. DANIEL HOUFEK	3
	B. GIRL SCOUT CAMP ARNAZ.....	4
	C. FIRST CONTACT.....	6
	D. PURSUIT.....	6
	E. THE SHOOTING	7
	F. ADDITIONAL POLICE RESPONSE AND INVESTIGATION	9
	G. WITNESS STATEMENTS	10
	1. CONFIDENTIAL WITNESS NUMBER 1.....	10
	2. 911 CALL — CONFIDENTIAL WITNESS NUMBER 2	10
	3. DEPUTY DANIELLE DELPIT	11
	4. DEPUTY BRIAN DENT.....	15
	5. FIREFIGHTER/PARAMEDIC BRIAN BELITSKI	19
	6. CONFIDENTIAL WITNESS NUMBER 4.....	19
	7. CONFIDENTIAL WITNESS NUMBER 5.....	19
III.	PHYSICAL EVIDENCE	20
	A. CRIME SCENE	20
	B. TOXICOLOGY REPORT	21
	C. AUTOPSY	22
IV.	LEGAL PRINCIPLES	22
	A. LAW OF HOMICIDE AND SELF-DEFENSE	22
	B. DANIEL HOUFEK’S CRIMINAL CONDUCT.....	24
V.	ANALYSIS.....	25
VI.	CONCLUSION.....	26

I. INTRODUCTION

On July 12, 2013, the Ventura County Sheriff's Office received a call related to a suspicious vehicle parked near a Girl Scout camp outside Ojai, California. The vehicle had been parked there for more than an hour and a parent had related their concern about a "creepy looking guy" in the vehicle parked so close to the entrance of the camp.

Deputy Danielle Delpit and her canine partner, Dano, were dispatched to the call. Deputy Brian Dent also responded to the call for backup. Deputy Delpit contacted Daniel Houfek, who was sitting in his Chevrolet Suburban approximately 200 feet from the entrance to the camp.

Houfek had prior felony convictions and had been to prison. He had methamphetamine in his system and possession of a loaded handgun, offenses which would likely send him back to prison if he was caught. Houfek informed Deputy Delpit that he was sad about a child being "taken away." Deputy Delpit asked Houfek to step out of the car. Instead, Houfek drove away.

Deputies Delpit and Dent pursued Houfek with the lights and sirens of their patrol vehicles activated. Houfek drove onto Highway 33, then onto Old Creek Road. Houfek eventually stopped approximately 50 feet from a gate leading into the Old Creek Ranch Winery. Houfek stepped out of the car holding a gun against his head and told the deputies, "Shoot me! Kill me!" Deputy Delpit ordered Houfek to drop the gun. Houfek then began moving the gun in her direction.

Officer Delpit began firing as Houfek pointed his gun at her. Deputy Dent was unable to see Houfek or who was firing their weapon. Houfek moved toward the passenger side of

the Suburban and into Deputy Dent's view. Houfek then began pointing his handgun at Deputy Dent. Deputy Dent then fired at Houfek.

Houfek retreated up the road toward a gate leading into the Old Creek Winery. The deputies continued to order him to drop his gun. Houfek continued to yell at the deputies to "kill me" and continued to point the gun in their direction. The deputies were concerned about their safety and the safety of any individuals who may have been at the winery. They pursued Houfek up the road.

Houfek threw his gun to the ground in apparent frustration and shouted, "You guys need to kill me!" The deputies rapidly moved toward Houfek, who reached for the gun. Both deputies again fired at Houfek, who fell to the ground. He moved toward the gun that lay underneath him and Deputy Delpit fired one more time. Houfek died at the scene.

The District Attorney's Office has a 24-hour, on-call, officer-involved shooting team available to all Ventura County law enforcement agencies to assist in the investigation of officer-involved shootings. Once the District Attorney's Office was notified of the shooting, Senior Deputy District Attorney Christopher Harman (who authored this report) and District Attorney Investigators Kimberly Michael and Tom Mendez responded to the shooting scene and consulted with the investigating officers.

The Ventura County Sheriff's Office conducted an investigation of the shooting, which included interviewing witnesses, collecting physical evidence, and photographing the area of the shooting. Both involved deputies individually conducted a voluntary walkthrough interview with criminal investigators where they described the incident.

The investigation reports prepared by the Ventura County Sheriff's Office were then submitted to the District Attorney's Office for a determination of whether the shooting of Daniel Houfek was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

The District Attorney's Office reviewed approximately 3,000 pages of reports and documents, interviews of police and civilian witnesses, diagrams, photographs, numerous recorded interviews and records, and recordings of radio transmissions. District Attorney's Office personnel also examined the scene of the shooting.

Based on the information available for review, the District Attorney's investigation, and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Daniel Houfek by Ventura County Sheriff's Deputies Delpit and Dent was justified and was not a criminal act.

II. STATEMENT OF FACTS

A. DANIEL HOUFEK

Daniel Houfek was born September 17, 1970. He associated with a violent skinhead gang and had numerous tattoos indicating white supremacist beliefs. Houfek had a criminal record that included convictions for possession of methamphetamine, possession of dangerous weapons, felon in possession of a firearm, assault with a deadly weapon and burglary. He had served time in the California Department of Corrections but was not on parole at the time of this incident. His prior offenses would have qualified him for prosecution under the "Three Strikes" law and he would have faced significant prison time for any new felony conviction.

Prior to this incident, Houfek had expressed suicidal intentions such as videotaping himself playing Russian roulette. A few months before the incident, Houfek's girlfriend had lost a baby due to a genetic condition of the child and the loss exacerbated his depression. At the time of the incident, he had a significant level of methamphetamine in his system, but it is unclear when he ingested the methamphetamine.

B. GIRL SCOUT CAMP ARNAZ

Camp Arnaz is a Girl Scout camp located at 155 Sulphur Mountain Road near Ojai, California. On July 12, 2013, the camp was holding an outdoor survival skill session for Girl Scouts that was to last the weekend. Outdoor sessions typically involve 100 to 200 Girl Scouts aged between 6 and 18.

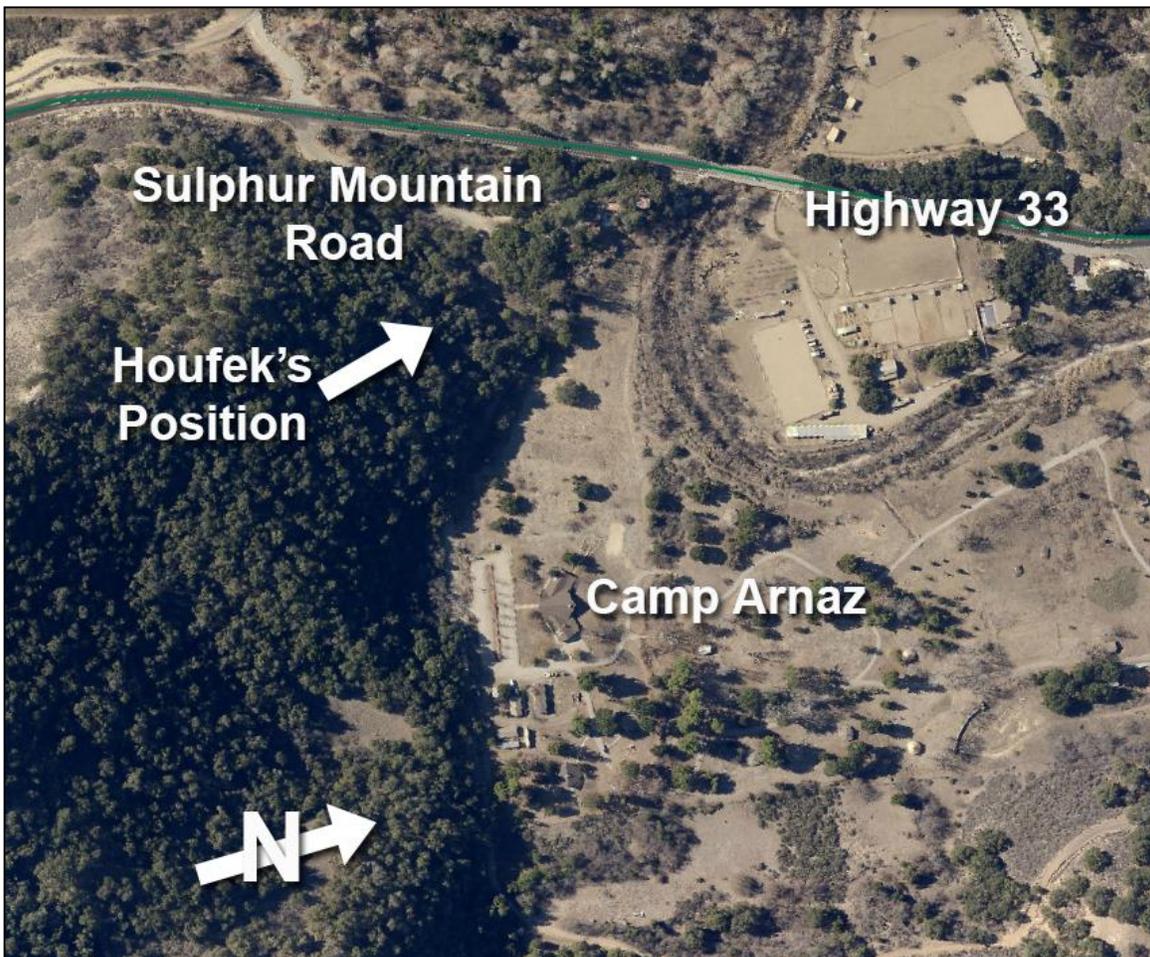
One of the Girl Scout parents noticed Daniel Houfek parked outside the camp in a primer black Chevrolet Suburban with a lifted suspension. Houfek was bald-headed and covered in numerous tattoos. He was staring into space and his unexplained presence so close to the camp alarmed the parent. The parent noticed Houfek was still there one hour later and appeared to be wiping something with a white rag. The parent alerted camp personnel, who called 911 to report Houfek and the parent's concerns.¹

Ventura County Sheriff's Deputy Danielle Delpit was assigned to the Ojai Valley Station with her canine partner, Dano. At approximately 5:42 p.m., she was dispatched to the suspicious vehicle report related to Houfek's car. Ventura County Sheriff's Deputy Brian Dent, also assigned to the Ojai Valley Station, heard the call for service and decided to provide backup for Deputy Delpit.

¹ Camp Arnaz is not visible from the location Houfek was parked on Sulphur Mountain Road and there is no indication that Houfek's presence was connected to the camp.



Houfek's Suburban



Aerial photograph of the area where Houfek was first contacted

C. FIRST CONTACT

Deputy Delpit arrived at the location at approximately 5:53 p.m. She observed a 1989 Chevrolet Suburban registered to Houfek parked facing west on the north side of Sulphur Mountain Road, approximately 200 feet from the entrance to Camp Arnaz. Houfek sat in the driver's seat, holding a white Kleenex. Houfek had methamphetamine in his system and a loaded 9mm handgun with him in the car.

Deputy Delpit approached Houfek and asked him some questions about what he was doing there. Houfek mentioned that he was "down" and something about a child being taken away. She asked him to step out of the car. Instead, Houfek drove away at a high rate of speed.

Deputy Dent arrived just before Houfek sped away. Deputy Delpit informed him that Houfek was not free to leave and they began pursuing him with their lights and sirens activated.

D. PURSUIT

Houfek turned onto Highway 33 and the deputies followed him. He turned right onto Old Creek Road and stopped. Deputy Delpit notified dispatch that Houfek had stopped and that they were preparing to conduct a high-risk traffic stop. Houfek accelerated and sped away from the deputies again, driving down Old Creek Road at a high rate of speed.

Old Creek Road ends at the Old Creek Ranch Winery. A large gate, which is closed daily at 5:00 p.m., crosses the road at the entrance to the winery. Houfek stopped his Suburban approximately 50 feet from the closed gate. Deputy Delpit stopped her patrol car several feet behind Houfek's vehicle and stood behind her open car door. Deputy Dent stopped his car behind Deputy Delpit's vehicle and ran to her patrol car's passenger door.

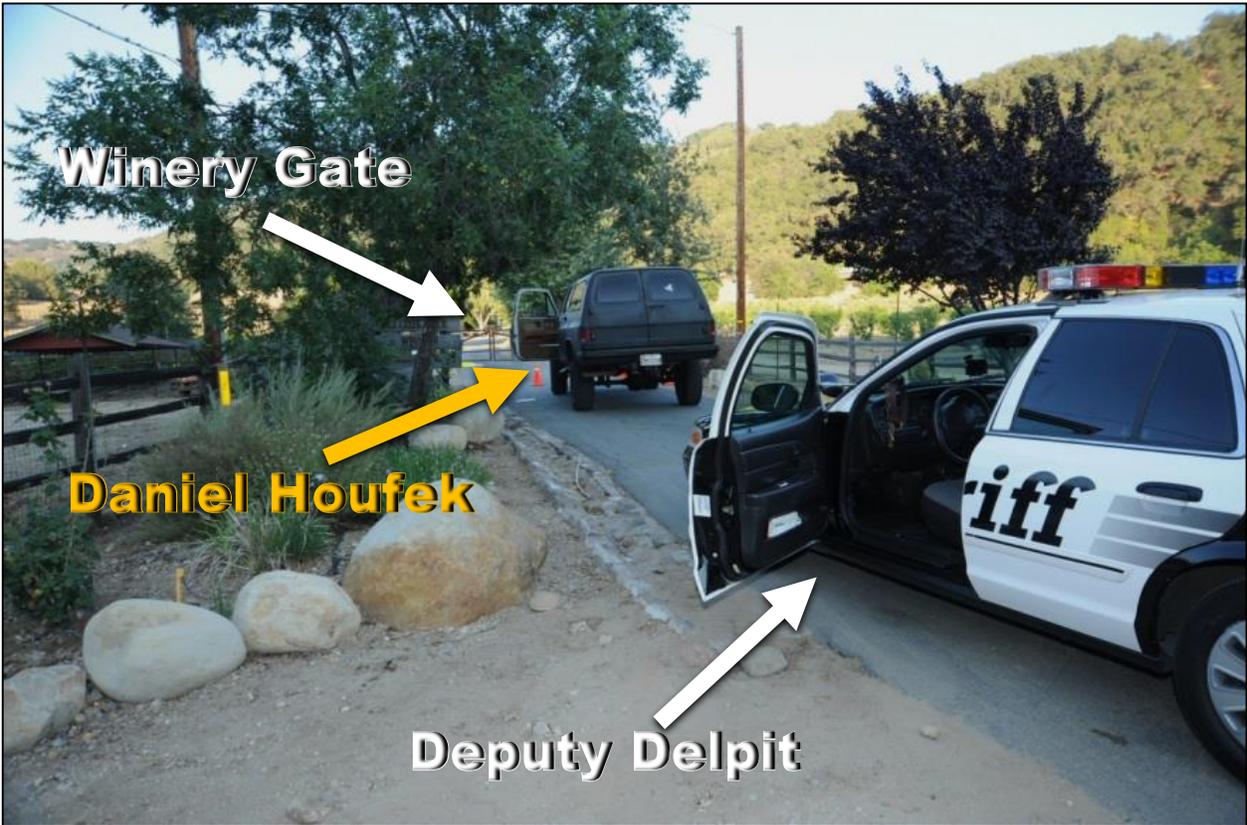


Map of the Pursuit Route

E. THE SHOOTING

Houfek got out of his car and placed his handgun to his left temple. He shouted at Deputy Delpit, “Shoot me! Kill me! Just shoot me, kill me!” Based on the position of the vehicles, Deputy Dent was unable to see Houfek. Deputy Delpit yelled at Houfek to drop his gun. Houfek began pointing his gun at Deputy Delpit. Deputy Delpit was afraid he was going to shoot at her and fired her handgun at Houfek. She then ducked behind her car’s door for cover.

Houfek was unaffected by Deputy Delpit’s gunfire. He walked to the front of the Suburban while still holding his handgun. He moved into Deputy Dent’s field of view on the passenger side. Deputy Dent noticed Houfek was holding a gun and yelled at Houfek, “Get on the ground!” Houfek ignored the command and continued yelling for the deputies to shoot him. Houfek began to point his gun in the direction of Deputy Dent. Deputy Dent was afraid Houfek intended to shoot at him, so he fired at Houfek.



Old Creek Road Facing Gate

Houfek moved up the road toward the closed metal gate. When he reached the gate, he climbed through to the other side. The deputies were aware that the winery was on the other side of that gate and grew concerned about Houfek harming civilians in the area.

The deputies began approaching Houfek's position up the driveway, approximately 50 feet away. There was no cover or concealment for the deputies as they approached. Based on that lack of cover, the deputies began firing at Houfek as they moved toward him.

The deputies continued approaching while Houfek still possessed the handgun. He appeared to grow frustrated and threw the gun to the ground. The force caused the grip panels to break away from the gun and dislodged the magazine.²

² Neither deputy saw that the magazine had become dislodged. However, the gun was still operable and a live round remained chambered and ready to fire.

Houfek continued yelling at the deputies to kill him and the deputies ordered him to move away from the gun. Houfek lunged toward the gun on the ground and the deputies fired at him.

Houfek fell to the ground, partially covering the gun, and his hands were also underneath his body. The deputies again ordered Houfek to move away from the gun. Houfek made a movement toward the gun and Deputy Delpit fired again from approximately 10 feet away. The deputies were then able to handcuff Houfek and, at 5:59 p.m., requested emergency medical personnel to respond to the scene to treat Houfek's injuries.

After the shooting ended, Deputy Dent activated his personal recording device. Both deputies could be heard asking Houfek why he did not drop his weapon but there was no audible response from Houfek.

F. ADDITIONAL POLICE RESPONSE AND INVESTIGATION

A crime scene was established and marked off. Emergency medical personnel arrived on scene. Houfek was pronounced dead at the scene at 6:11 p.m.

Evidence seized at the scene included 14, .40-caliber expended casings fired by Deputy Delpit and 12, .45-caliber expended casings fired by Deputy Dent. Houfek's handgun, a Ruger 9mm semiautomatic, was located in the street west of Houfek's location. There was a round chambered in the gun but it had not been fired. A 9mm magazine loaded with two live rounds was located just west of the gate, and four live 9mm rounds were in the street near Houfek's handgun.

Deputies Delpit and Dent each provided criminal investigators separate on-scene walkthrough interviews of the incident.

G. WITNESS STATEMENTS

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

1. CONFIDENTIAL WITNESS NUMBER 1

Confidential Witness Number 1 (CW1) was interviewed by Ventura County Sheriff's Senior Deputy Beauvais on July 12, 2013.³ CW1 was dropping their child off at the camp. As they drove up the road to the camp, CW1 saw a "spray painted" Suburban parked approximately 40 feet from the camp's front entrance. A man sat in the driver's seat. The man was bald with tattoos and body modifications. The man was staring straight ahead and not looking around. CW1 described him as "creepy."

The appearance of the man, his mannerisms, and his location near the camp made CW1 nervous for their daughter. Rather than dropping their child off, they stayed at the camp for over an hour. When they drove back down the road, the man was still there and appeared to be wiping something with a white cloth. CW1 returned to the camp and told CW2 about the Suburban and the man outside the camp. CW1 then left the area.

2. 911 CALL — CONFIDENTIAL WITNESS NUMBER 2

Confidential Witness Number 2 (CW2) called 911 at approximately 5:40 p.m. CW2 had been told by CW1 that a "strange man" had been sitting in a gray Suburban outside the camp.⁴ CW2 was concerned because of all the girls who would be camping there that weekend, so CW2 called 911.

³ Daniel Houfek was associated with an extremely violent skinhead gang. Out of an abundance of caution, civilian witnesses will not be identified by name to protect their anonymity and to lessen any chance of retaliation for their roles in this incident.

⁴ CW2 told Confidential Witness Number 3 (CW3) that a "creepy guy" was driving back and forth in front of the camp and CW3 took all of the campers to the rear of the property to be safe.

CW2 reported to the 911 dispatcher that a camper's parent had just informed CW2 of an odd vehicle parked near the camp that had been there for more than an hour. CW2 called the Sheriff's Office and requested a patrol unit to respond to investigate the vehicle.

3. DEPUTY DANIELLE DELPIT

Deputy Delpit voluntarily agreed to conduct an on-scene walkthrough interview in the presence of her attorney. She was interviewed on July 12, 2013, by Detective Steve Michalec at approximately 11:55 p.m.

Deputy Delpit related that at approximately 5:45 p.m., she received a call about a suspicious subject parked near the Girl Scout camp on Sulphur Mountain Road. She responded to that call in her marked patrol car, along with her canine partner, Dano. She had been dispatched alone, but Deputy Dent had heard the call and told dispatch that he would also respond as her backup.

Deputy Delpit reached the location first and noticed a "lifted" primer black Suburban parked facing west along the gate of the Girl Scout camp. She passed the Suburban and parked facing it, then got out of her patrol car and walked up to the passenger window. A male subject (Daniel Houfek) was seated in the driver's seat holding a white Kleenex. She could not see Houfek's other hand due to the height of the truck.

Deputy Delpit asked Houfek what he was doing and he responded that he was "down" and mentioned something about a child being taken away. Houfek's eyes were kind of glassy and she believed that he might have been using heroin. She thought the tissue might have been there to absorb blood from injection marks. She asked him how long he had been there and he responded "all day."

Deputy Dent arrived on scene as Deputy Delpit was speaking with Houfek. She asked Houfek to step out of his Suburban. Instead, Houfek shifted into gear and drove off.

Deputy Delpit told Deputy Dent that Houfek had not been free to leave. Both deputies got back into their patrol cars and began pursuing Houfek with their overhead emergency lights and sirens activated. Houfek turned northbound onto Highway 33 and Deputy Delpit alerted dispatch that they were in pursuit of the Suburban on Highway 33.

Houfek's Suburban turned right onto Old Creek Road with the deputies in pursuit. Both deputies followed. As they drove, Houfek slowed down and stopped. Deputy Delpit advised dispatch that they would be conducting a felony stop.⁵ She stopped her patrol car and started to get out, when Houfek drove away.

Houfek drove very fast. Deputy Delpit drove directly behind Houfek. She was not familiar with Old Creek Road and asked Deputy Dent to begin calling out the pursuit to dispatch. She heard Deputy Dent state that the road ended at a winery. The manner in which Houfek was driving—very fast and all over the road—made Deputy Delpit feel that Houfek was preparing to “do something.”

Houfek suddenly stopped his Suburban approximately 50 feet from a gate leading to the Old Creek Ranch Winery. Deputy Delpit tried to stop her vehicle in a safe location, but could only stop in what she described as “the kill zone of [Houfek's] door.” She got out of her car, unholstered her handgun, and stood between her car and the open driver's side door. Deputy Dent had stopped his car behind Deputy Delpit's car. He had moved up toward her position and now stood behind Deputy Delpit's passenger door.

⁵ A “felony stop” is a tactic police train for that is intended to maximize the safety of both officers and suspects during a high risk stop where police suspect that the occupants of the car are armed and/or prone to violence.

Houfek opened his door and got out of his Suburban. He stood by the Suburban door and was approximately 40 feet away from Deputy Delpit. He held a silver handgun which he placed against his own left temple. He yelled, "Shoot me, kill me, just shoot me!"

Deputy Delpit loudly ordered Houfek to drop the gun. She continued to yell at him to drop the gun during the entire incident. She also aimed her gun at Houfek because she felt it would only take a fraction of a second for him to move his gun and point it at her.⁶

Houfek was standing on the driver's side of his Suburban, and Deputy Delpit did not think Deputy Dent was able to see Houfek, who was still about 15 feet away. Houfek put both his hands on his gun and began pointing his gun toward Deputy Delpit in a shooting stance. She feared that he was going to shoot her so she fired at him. She ducked behind the door and fired at least two shots from her position behind the door.

Houfek moved to the front passenger side of the Suburban. Deputy Delpit was aware of Houfek's movements by watching Houfek's shoes which were visible under the Suburban. She then heard gunshots, which she believed were coming from Deputy Dent.

Houfek began moving away from the Suburban. He moved out of her view and toward a metal gate that crossed the street approximately 50 feet in front of the Suburban. Deputy Delpit moved forward along the driver's side of the Suburban. She did not know where Houfek was located. She had no cover and feared that Houfek could shoot at the deputies under the Suburban.

⁶ Deputy Delpit did not send Dano after Houfek as Houfek already had a gun in his hand and would have been able to shoot Dano long before he could have gotten close to Houfek.

Deputy Delpit moved to the front of the Suburban and saw Houfek standing by the metal gate with the gun still in his hand. Deputy Delpit did not know what was beyond the gate that Houfek had climbed through. She explained: “I feared that if he didn’t go and shoot somebody that he came in contact with, he was gonna do anything, he would take someone in a hostage situation. And then we would have even a worse situation.”

Deputy Dent had also reached the front of the Suburban. Deputy Delpit yelled at Houfek to drop the gun. Instead, he pointed the gun at her. Houfek was approximately 50 feet away, but there was no cover between Houfek and the deputies. Deputy Delpit again fired at Houfek. The deputies both fired all the ammunition in their magazines and reloaded as they approached Houfek’s position.

Houfek remained standing after Deputy Delpit had fired at him and she did not believe that any of her or Deputy Dent’s shots had hit him. Houfek threw his gun to the ground near his feet, and both deputies began rapidly advancing toward him.

As she approached, Deputy Delpit ordered Houfek to move away from the gun, which was still lying on the ground near his feet. Houfek then reached for the gun with both of his hands. Fearing that Houfek would regain the gun and shoot at them, Deputy Delpit fired again from approximately 30 feet away. Deputy Dent also fired at Houfek.

Deputy Delpit believed that some of the shots had hit Houfek, but he did not fall to the ground. Instead, he made a “last ditch” lunge for the handgun. Deputy Delpit fired again from approximately 10 feet away. She then approached Houfek and kicked his gun away from him. Deputy Dent handcuffed Houfek and patted him down to search for additional weapons.

4. DEPUTY BRIAN DENT

Deputy Dent voluntarily agreed to conduct an on-scene walkthrough interview in the presence of his attorney. He was interviewed by Detective Michalec at approximately 12:30 a.m. on July 13, 2013.

On July 12, 2013, Deputy Dent heard Deputy Delpit dispatched to investigate a suspicious vehicle parked near the Girl Scout Camp on Sulphur Mountain Road. Deputy Dent decided to respond to back up Deputy Delpit.

Deputy Dent arrived at the location and saw Deputy Delpit outside of her car and standing next to the passenger's side window of a gray Suburban that was parked facing oncoming traffic. He stopped his patrol car approximately 20 yards from the Suburban, got out of his car, and began walking towards Deputy Delpit's location. The Suburban began driving away and Deputy Delpit yelled, "He's leaving!" Both deputies ran to their cars and began pursuing the Suburban.

Deputy Dent was the first car in pursuit and followed the Suburban as it turned right at Highway 33. He heard Deputy Delpit advise dispatch that they were involved in a pursuit.

The Suburban turned right onto Old Creek Road and Deputy Dent advised dispatch of the turn. The Suburban began slowing down as if it was going to stop shortly after turning onto Old Creek Road. Deputy Dent moved his car to the left of the road and opened his driver's side door to prepare for a felony stop. He exited his car and drew his handgun, taking cover behind the door. He was able to see the driver, Daniel Houfek.⁷

⁷ Deputy Dent had no previous contact with Houfek and did not know his name, but Houfek's name is used for clarity.

Houfek began hitting the steering wheel with both hands. He looked at Deputy Dent and began shouting, but Deputy Dent could not understand what he was saying. Deputy Dent ordered Houfek to put his hands in the air. Deputy Delpit pulled her patrol car next to Deputy Dent's patrol car and Houfek accelerated away from them.

Deputy Delpit became the lead in the pursuit as she was already in her car when Houfek drove away. She was not familiar with the area so she asked Deputy Dent to keep dispatch notified of the course of the pursuit. Deputy Delpit saw a sign for the Old Creek Ranch Winery and notified Deputy Delpit that the road would eventually dead end at the winery.

The Suburban stopped a short time later, approximately 50 feet from a gate leading to the winery. Deputy Delpit stopped her car approximately 20 feet behind the Suburban and Deputy Dent stopped several feet behind her patrol car.

Deputy Dent exited his patrol car and saw Deputy Delpit was already out of her car, standing in the open driver's door. Houfek was also out of his Suburban, standing at the front of the SUV. Houfek appeared angry and was yelling and waving his hands. Deputy Dent could not hear what Houfek was yelling and did not see anything in his hands at that point.

Deputy Dent moved forward and tried to open Deputy Delpit's passenger side door but it was locked. He stood next to the door and heard more yelling and screaming but his view of Houfek was blocked by the Suburban. Houfek then walked into Deputy Dent's line of view holding a gun in his left hand.⁸ He held the gun sideways with the muzzle next to his left temple. Houfek was shouting, "Kill me! Kill me!"

⁸ In a video Houfek recorded of himself playing "Russian roulette," he held the gun to his head with his left hand.

Deputy Delpit was yelling at Houfek to drop the gun. Houfek moved back toward the driver's side of the Suburban and out of Deputy Dent's view. Deputy Dent then heard a gunshot. He did not know if the shot was from Deputy Delpit or Houfek, but he heard more yelling followed by more gunshots. He believed that Houfek had fired a shot at Deputy Delpit, who was returning fire.

Deputy Dent heard more gunshots and then Houfek moved back into Deputy Dent's line of sight. Houfek still held the gun in his left hand. Houfek began moving the gun toward Deputy Dent, which caused the deputy to fear Houfek "was gonna try and shoot me and kill me." Deputy Dent then began firing at Houfek. Deputy Dent recalled Deputy Delpit advising Sheriff's Dispatch that shots had been fired.

Houfek began moving up the driveway away from the deputies. Deputy Dent followed Houfek's movements by watching his feet underneath the lifted Suburban. Both deputies yelled at Houfek to drop his gun and get on the ground, but Houfek again pointed the gun at Deputy Dent, who fired several more shots.

The deputies moved forward along opposite sides of the Suburban. Deputy Dent was unsure of how many rounds he had fired at that point. During the interview he noticed one of his magazines lying near the passenger side of the Suburban and recalled that he had run out of ammunition at one point and reloaded.

Houfek continued yelling at the deputies, "Shoot me! Kill me! Come on, what are you guys doing? Shoot me!" Houfek still had the gun in his hand and climbed through the gate. There was no cover between them, but both deputies continued approaching Houfek.

“We’re moving with him. We’re not lettin’ him get out of sight. We don’t. At this point, he’s tried to kill us. I feel he’s engaged us in a fight and he’s a threat. To myself, to my partner, to society.” He further explained why he felt they had to approach Houfek.

“Well, if he was willing to kill us and he’s in that type of mood where he wants to kill us or somebody else. If you’re willing to kill a cop, you’re willing to kill anybody and I know there was a house back here somewhere.”

As the deputies approached, Houfek threw his gun to the ground hard enough to cause the grips to come off. Houfek yelled at the deputies, “You guys just need to kill me! You guys just need to kill me!” Houfek then moved toward the gun on the ground and both deputies fired at him from approximately 30 feet away. Houfek fell to the ground.

Deputy Dent did a tactical reload⁹ and the deputies climbed through the gate toward Houfek, who lay on his stomach in the street. The gun was underneath Houfek, with a portion of it visible to the deputies. Both deputies yelled at Houfek not to move. Houfek then made a motion as if he was trying to reach for his gun. Deputy Delpit fired a single shot at Houfek and Houfek stopped moving. Deputy Dent ordered Houfek not to move and then handcuffed him.

Deputy Dent had a personal audio recorder but he did not activate it until after the shooting had stopped. He asked Houfek why he had not dropped the gun but Houfek did not respond. Deputy Delpit then requested emergency medical providers to respond to the scene.

⁹ A tactical reload is reloading a weapon before it has fired all rounds out of a magazine and retaining the original partially full magazine in case that ammunition is needed.

5. FIREFIGHTER/PARAMEDIC BRIAN BELITSKI

Firefighter/Paramedic Brian Belitski was a firefighter/paramedic employed by the Ventura County Fire Department. He responded to the shooting on July 12, 2013. Prior to responding, they received a call relating to a gunshot victim on Old Creek Road and were informed that sheriff's deputies were already on scene.

Belitski was the only fire personnel allowed to approach the patient (Houfek). Houfek was handcuffed and lying on the right side of his stomach. Belitski determined Houfek had died and officially pronounced him dead at 6:11 p.m.

Belitski noticed Houfek had numerous tattoos and that a handgun was on the ground to his right. He also noticed a large number of bullet casings in the area. After pronouncing Houfek, he asked for a blanket and he and one of the deputies on scene covered Houfek's body with the blanket.

6. CONFIDENTIAL WITNESS NUMBER 4

On July 14, 2013, Deputy Loes was approached by Confidential Witness Number 4 ("CW4") who claimed to be an associate of Daniel Houfek.¹⁰ CW4 had recently spent time with Houfek before the shooting incident. CW4 related that Houfek had been depressed over the loss of an unborn daughter and had indicated that he wanted to end his life. CW4 believed that the baby's due date had been July 11, the day before the incident, and that Houfek likely provoked the incident to end his life.

7. CONFIDENTIAL WITNESS NUMBER 5

On July 23, 2014, Confidential Witness Number 5 ("CW5") spoke with District Attorney Investigator Michael by telephone. CW5 did not want to meet to discuss Houfek and

¹⁰ The investigation has corroborated CW4's claimed association with Houfek. CW4 expressed fear of retaliation from Houfek's gang associates if CW4's name was revealed.

related the information CW5 was aware of by telephone. CW5 had a close association with Houfek that spanned several years. CW5 stated, “I believe he wanted to die by suicide by cop. I believe he wanted to die to be with his daughter. If the cops felt threatened, they did what they had to do.”

III. PHYSICAL EVIDENCE

A. CRIME SCENE

A 9mm handgun was found in close proximity to Houfek’s body. There was one 9mm Luger round in the chamber. The magazine, which had become dislodged during the incident, was also found nearby and contained two 9mm Luger cartridges. The broken Ruger pistol grips from Houfek’s weapon were located nearby as well. Additionally, four 9mm Luger rounds were found strewn about the immediate area of Houfek’s firearm. The gun was examined and determined to be in poor operating condition but functioned normally when test-fired.

Fourteen empty .40-caliber cartridge cases and 12 empty .45-caliber casings were recovered from the scene.¹¹ An empty .40-caliber magazine was located on the street halfway between the Suburban and the gate, and an empty .45-caliber magazine was located in the dirt to the right of the Suburban’s right front tire.

Houfek’s phone was recovered on scene and searched pursuant to a search warrant. In two separate short clips, Houfek is seen putting what appears to be a live cartridge in the chamber, spinning the cylinder, putting the gun barrel against his head, and pulling the trigger.¹²

¹¹ Deputy Dent fired 15 rounds, but only 12 empty casings were recovered at the scene.

¹² One clip was dated 12-9-2012 and the other clip was dated 12-20-2012.

A worker at the winery was filming with a cell phone camera at the time of the shooting and captured some of the incident on a 40-second video clip. The video begins with the camera looking west down Old Creek Road toward the closed gate. Houfek's Suburban and at least one police car are visible on the other side of the gate. About one second after the video starts, two flashes are visible west of the Suburban, followed by the sound of two gunshots.



Still from Cell Phone Video Showing First Flash

The camera becomes unstable and moves away from the scene. Two groups of two gunshots can be heard over people talking. No more gunshots are audible until approximately 34 seconds in, when there is a flurry of approximately six gunshots and the video ends six seconds later.

B. TOXICOLOGY REPORT

Houfek's blood was collected at the autopsy. The blood was analyzed for drugs and alcohol by forensic scientists with the Ventura County Sheriff's Department Forensic

Sciences Laboratory. Analysis of his blood showed that his blood contained 732 ng/ml of methamphetamine and 141 ng/ml of amphetamine at the time of death.¹³

C. AUTOPSY

Daniel Houfek was pronounced dead at the scene at 6:11p.m. on July 12, 2013. An autopsy was performed on July 15, 2013, by Dr. Jon J. Smith, Ventura County Medical Examiner. Dr. Smith located seven distinct gunshot wounds: four entry wounds on his back, two on his left side, and one on his right side. Some of the bullets struck Houfek's heart, lungs, and liver. Dr. Smith found that Houfek died from multiple gunshot wounds and that the killing was a homicide, meaning a death at the hands of another.

IV. LEGAL PRINCIPLES

A. LAW OF HOMICIDE AND SELF-DEFENSE

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide encompasses murder and manslaughter, which are unlawful, and acts of excusable and justifiable homicide, which is lawful.

Homicide is justifiable when committed by any person "resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person." (Pen. Code § 197(1).)

CALCRIM 550 provides the specific jury instructions on the defense of self-defense, which provide that a person is not guilty of murder or manslaughter if 1) that person "reasonably believed that [the person] [or] someone else . . . was in imminent danger of

¹³ A typical recreational dose of methamphetamine ranges between .1 to .2 grams. In one study, an oral dose of .12 grams led to a peak plasma concentration of .02 mg/L (200 ng/mL) approximately three hours after ingestion and an intravenous dose led to an almost instantaneous peak plasma concentration of .097 mg/L (970 ng/mL). B.K. Logan, *Methamphetamine — Effects on Human Performance and Behavior*; *Forensic Sci. Rev.* 14:133, 140-141; 2002.

being killed or suffering great bodily injury”; 2) that person “reasonably believed that the immediate use of deadly force was necessary to defend against that danger”; and 3) that person “used no more force than was reasonably necessary to defend against that danger.”

CALCRIM 550 further provides that in deciding whether that person’s “beliefs were reasonable, consider all the circumstances as they were known to and appeared to [that person] and consider what a reasonable person in a similar situation with similar knowledge would have believed. If [that person]’s beliefs were reasonable, the danger does not need to have actually existed.” It also provides that “[a person] is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger has passed. This is so even if safety could have been achieved by retreating.”

A killing by a peace officer is justifiable when it was “necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty” or “when necessarily committed in arresting persons charged with [a] felony, and who are fleeing from justice or resisting such arrest.” (Pen. Code § 196.)

Police officers have a duty “to maintain peace and security” and “to protect citizens from harm.” (*Batts v. Superior Court* (1972) 23 Cal.App.3d 435, 438.) A police officer may use deadly force when the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. (*Graham v. Conner* (1989) 490 U.S. 386, 396-397.) Reasonableness includes “allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.*)

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

“The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene. It is also highly deferential to the police officer’s need to protect himself and others.” (*Martinez v. County of L.A.* (1996), 47 Cal.App.4th 334, 343 (quoting *Graham* 490 U.S. at 396-397).) The reasonableness test requires careful attention to the facts and circumstances of each particular case, including: (1) “the severity of the crime at issue”; (2) “whether the suspect poses an immediate threat to the safety of the officers or others”; and (3) “whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” (*Graham*, 490 U.S. at 396.)

B. DANIEL HOUFEK’S CRIMINAL CONDUCT

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

- Assault with a deadly weapon in violation of Penal Code section 245(a)(1)
- Assault on a peace officer in violation of Penal Code section 245(c)
- Felon in possession of a firearm in violation of Penal Code section 29800(a)(1)
- Evading a peace officer of Vehicle Code section 2800.1

- Resisting a peace officer in violation of Penal Code section 148(a)
- Driving under the influence in violation of Vehicle Code section 23152(a) and (b)
- Under the influence of methamphetamine in violation of Health & Safety Code section 11550

V. ANALYSIS

On July 12, 2013, Daniel Houfek parked a short distance away from a Girl Scout camp near Ojai, California. While there is nothing to indicate he intended any action against any of the campers, his appearance, the appearance of his vehicle, and the amount of time he spent there was alarming to some of the campers' parents and they called 911.

Houfek was a convicted felon who had served time in prison. He was also despondent. He had expressed suicidal ideation to his acquaintances and had even filmed himself playing Russian roulette. He had methamphetamine in his system and was in the possession of a loaded handgun. The serious nature of his prior convictions would have likely resulted in a long prison sentence if he had been arrested.

Deputies Delpit and Dent responded to check on Houfek, and Houfek led them on a short chase. When he reached a gate across the road, he got out of the car, put a gun to his head and demanded the deputies shoot him. When the deputies did not comply, he pointed his loaded weapon at them to provoke them into shooting him.

At some point during that incident, Daniel Houfek likely made the decision to end his life. He placed Delpit and Dent into what they perceived to be a life or death situation for themselves and others who were in the area by pointing his gun at them. Pointing a firearm at a person is a threat of using deadly force against that person and the deputies were justified in defending themselves from that threat by using deadly force.

Both deputies fired at Houfek, but throughout the engagement both deputies continuously ordered Houfek to drop his gun and to surrender. Houfek did not comply with their commands but continued to threaten the deputies with the gun. Both deputies fired their weapons based on a reasonable perception that Houfek was trying to shoot them. Both deputies responded with reasonable force based on the situation, and ceased firing once Houfek ceased being a threat.

VI. CONCLUSION

It is the conclusion of the District Attorney that:

1. During the times Deputy Delpit fired her weapon at Daniel Houfek, Deputy Delpit honestly and reasonably believed that she and Deputy Dent were in imminent threat of death or great bodily injury.
2. During the times Deputy Dent fired his weapon at Daniel Houfek, Deputy Dent honestly and reasonably believed that he and Deputy Delpit were in imminent threat of death or great bodily injury.
3. Deputies Delpit and Dent honestly and reasonably believed that the immediate use of deadly force was necessary to defend themselves against the danger posed to them by Daniel Houfek at the times they fired their weapons.
4. Deputies Delpit and Dent used no more force than was reasonably necessary to defend against the apparent danger posed to them by Daniel Houfek.
5. The fatal shooting of Daniel Houfek by Deputies Delpit and Dent was a justifiable homicide.