

OFFICE OF THE DISTRICT ATTORNEY

February 19, 2015



REPORT ON THE SEPTEMBER 7, 2013,
SHOOTING OF DEVON COSTA
BY VENTURA COUNTY SHERIFF'S DEPUTY
DANIELLE DELPIT

GREGORY D. TOTTE
DISTRICT ATTORNEY
COUNTY OF VENTURA

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I. INTRODUCTION

On September 6, 2013, at approximately 2:18 a.m., Devon Costa was detained pursuant to Welfare and Institutions Code section 5150(a) for being a threat to himself or others due to a mental health condition, based on his walking in the middle of a street in Simi Valley and exhibiting other bizarre behavior. Approximately eight hours later, Costa was released from the Hillmont Psychiatric Center¹ in the city of Ventura.

On September 7, 2013, at approximately 4:33 p.m., about 30 hours after Costa was released from Hillmont, a civilian witnessed him walking in the middle of North Ventura Avenue in the city of Ventura, exhibiting bizarre behavior. A call was placed to 911 emergency dispatch.

Ventura County Sheriff's Deputy Danielle Delpit was dispatched to the call. She responded with her canine partner, a German Shepard named Dano. Deputy Delpit soon spotted Costa walking northbound on the sidewalk on North Ventura Avenue. Costa was waving his arms and appeared to be talking to himself.

Deputy Delpit passed Costa and turned her patrol car around. She exited her patrol car with Dano and attempted to contact Costa from the south. Costa ignored her and continued walking.

Deputy Delpit returned to her patrol car and requested backup to respond with lights and sirens activated. She continued to follow behind Costa in her patrol car. Costa eventually turned and faced her. Deputy Delpit stopped her car and again exited the patrol car with Dano. Costa began moving toward Deputy Delpit. She identified herself to Costa as a

¹ Hereinafter referred to as "Hillmont."

sheriff's deputy and told him to stop. Instead of stopping, Costa accelerated toward Deputy Delpit.

While rushing towards Deputy Delpit, Costa raised his arm with a clenched fist. Deputy Delpit perceived Costa was approaching to attack her so she commanded Dano to subdue him with a bite. Dano ran towards Costa, biting and holding onto his left arm. Despite being a large animal, Dano was unable to take Costa to the ground. Instead, Costa spun with Dano still attached to his arm and struck Deputy Delpit in the face with his right fist, causing a concussion. Deputy Delpit's knees buckled after the blow and she almost fell to the ground.

Deputy Delpit retreated and Costa continued advancing towards her. She was afraid she was about to lose consciousness. She felt Costa pulling on her gun belt. As she moved backward, she drew her handgun. She believed Costa was trying to take away her gun. Fearing for her life, she managed to fire one shot from her handgun which struck Costa in the abdomen.

Costa backed away from Deputy Delpit but continued to struggle with Dano. Costa eventually fell to his knees and then fell to the ground. Deputy Delpit released Dano from the bite. Emergency medical personnel arrived at the scene and began providing first aid to Costa. Costa was transported to the Ventura County Medical Center where he was pronounced dead.

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 Harman² and District Attorney Investigator Adam Wittkins 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. Deputy Delpit conducted a voluntary walkthrough interview with criminal investigators where she fully described the incident.

The Ventura County Sheriff's Office's investigation reports were then submitted to the District Attorney's Office for a determination of whether the shooting of Devon Costa 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 examined approximately 700 pages of reports and materials including interviews of police and civilian witnesses, diagrams, photographs, numerous recorded interviews and records, recordings of radio transmissions, and examining the scene of the shooting.

Based on the evidence available for review, the District Attorney's independent investigation and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Devon Costa by Ventura County Sheriff's Deputy Danielle Delpit was justified and not a criminal act.

² The author of this report.

II. STATEMENT OF FACTS

A. DEVON COSTA

Devon Costa was born March 31, 1992. Costa had a record of adult criminal convictions dating back to 2010 that included commercial burglary, vandalism, hit-and-run driving causing property damage, possession of a dangerous or deadly weapon, and public intoxication.

Costa had been diagnosed with Psychotic Disorder (possible Schizophrenia) and primarily lived on the streets of Simi Valley and Santa Monica. He had been prescribed medication for his mental illness, which he refused to take. He would sometimes exhibit uncontrollable, violent, and threatening behavior. In the past, he had threatened violence towards his own family members, including his stepmother and brother. He was last seen by his psychiatrist in June 2013.

On September 6, 2013, at approximately 2:18 a.m., Simi Valley police officers contacted Costa walking in the eastbound lane of Cochran Street. During that contact, Costa told the Simi Valley police officers he was “walking to the corner to meet the devil.” Costa then asked the officer, “You can see him [the devil] in me, can’t you?”

Based on his bizarre behavior, the officers detained him pursuant to Welfare and Institutions Code section 5150(a) as a threat to himself and/or others due to a mental health condition. Costa was transported from Simi Valley to the Hillmont Psychiatric Center in Ventura and arrived there at approximately 5:53 a.m. Less than five hours later, at approximately 10:10 a.m., Devon Costa was released from the Hillmont facility.

B. DISTURBANCE ON NORTH VENTURA AVENUE

On September 7, 2013, at approximately 4:30 p.m., about 30 hours after being released from Hillmont, Costa was walking in the middle of North Ventura Avenue near Shell Road, just outside Ventura city limits. He was holding his arms in the air and moving his hands and fingers to his head as though he was talking to himself. Cars honked and swerved to avoid him.

Richard Shields, a security guard at a facility in the area, saw Costa walking in the street and was concerned for Costa's safety. Shields called the Ventura County Sheriff's Office and reported Costa's bizarre behavior.

C. FIRST CONTACT

Deputy Delpit was dispatched to Shell Road and North Ventura Avenue regarding a suspicious subject standing in the middle of the street with his arms out. She responded from north of the location. She was driving southbound on North Ventura Avenue when she spotted Costa walking northbound on the sidewalk. Costa was gesturing with his hands and appeared to be talking to himself.

Deputy Delpit drove past Costa, made a U-turn and began following him for a distance. She drove her patrol car north in the southbound lane as she followed Costa. Costa still appeared to be talking to himself. He was also waving his arms around and simulating masturbation over his clothing.

Deputy Delpit had past training in crisis intervention and dealing with mentally ill individuals. She was concerned that Costa was not in a normal mental state. She stopped her patrol car and exited with her canine partner, Dano. She called out to Costa, who turned and made strange facial expressions, then continued walking north.

Deputy Delpit notified Sheriff's Dispatch that Costa was "not responding to anything I'm saying" and was still walking northbound on North Ventura Avenue. She requested that the radio channel be cleared for emergency radio traffic only and also requested that her backup deputy respond Code 3³. Deputy Brian Dent heard that request and advised dispatch over the radio that he was also responding to the scene Code 3.

As Deputy Delpit continued to follow Costa northbound, a tow truck drove southbound just past them and parked on the western curb. Deputy Delpit activated her emergency overhead lights, passed the tow truck, and pulled her patrol car over against the western curb of North Ventura Avenue.

D. THE SHOOTING

Deputy Delpit exited her patrol car with Dano and identified herself to Costa as a sheriff's deputy. Costa started moving toward her and she ordered him to stop. Instead, Costa began rushing toward her with a clenched fist. Deputy Delpit was afraid that Costa intended to assault her, so she commanded Dano to bite Costa and stop his assault.

Dano bit Costa on his left arm. Costa seemed to ignore the dog hanging from his left arm and spun around. Costa then punched Deputy Delpit in the nose with his right fist. He punched her with enough force to give her a concussion. Costa continued moving toward Deputy Delpit, who tried to back away from him.

³ With emergency lights and siren activated



Deputy Delpit's patrol car on North Ventura Avenue

Deputy Delpit felt like she was going to lose consciousness from the blow to her face. She felt pressure on her gun belt which she perceived was Costa attempting to grab her gun. She believed that Costa was going to kill her and managed to unholster her weapon.

Costa kept moving toward Deputy Delpit, trying to hit her again. Dano was still attached to his left arm. Deputy Delpit yelled "Stop!" at Costa, who did not stop and continued moving toward her. Deputy Delpit fired one shot at Costa which hit him in the abdomen.

Costa backed away from Deputy Delpit after the gunshot and tried to get Dano off his arm. He began yelling at Deputy Delpit that he was going to kill her. Costa then fell to the ground. Deputy Delpit advised dispatch that Costa had been shot and requested an ambulance. She then called Dano off from his bite.

E. ADDITIONAL POLICE RESPONSE AND INVESTIGATION

Deputy Brian Dent was the first backup deputy to arrive on scene. He handcuffed Costa and checked his medical status. Other deputies began arriving and emergency medical personnel also arrived on scene. They treated Costa, who went into cardiac arrest. Costa was transported by ambulance to the Ventura County Medical Center where he was pronounced dead. Deputy Delpit was transported by Deputy Dent to Community Memorial Hospital where she was provided medical care for a concussion and sprained finger.

The area around Deputy Delpit's patrol car was marked off and evidence, including a single .40 caliber expended casing, was collected. Deputy Delpit returned from the hospital after treatment and provided criminal investigators with a voluntary on-scene walkthrough interview of the incident.

F. 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. RICHARD SHIELDS

On September 7, 2013, at approximately 7:10 p.m., Mr. Richard Shields was interviewed by Detectives David Brantley and Steven Michalec. Mr. Shields was working as a private security guard assigned to a facility on North Ventura Avenue. Mr. Shields said that on September 7, 2013, at approximately 4:30 p.m., he was returning from a break and heard a horn honk on North Ventura Avenue. He looked toward the sound and saw a male subject (Costa)⁴ "standing in the middle of the street" approximately 50 to 100 feet north

⁴ Mr. Shields had no prior contact with Costa, did not know his name, and did not use Costa's name in his interview or 911 call. Costa's name is used for clarity.

of Shell Road. Costa stood facing north between the two lanes of traffic, holding his hands straight out in front of himself with his face was turned to the sky. Cars were honking at him and veering around Costa to avoid hitting him.

As Mr. Shields watched, Costa moved toward the west shoulder of North Ventura Avenue and walked northbound. Costa had moved his hand to his head and was moving his fingers. Mr. Shields had seen similar behavior from subjects at a mental health facility he had worked at in the past. He believed that Costa might have been hearing voices.

Mr. Shields was concerned for Costa's safety and called 911 to report Costa's bizarre behavior in the street. Costa continued walking north and moved out of Mr. Shield's line of vision. Mr. Shields never saw a deputy respond, but heard a lot of responding police sirens approximately 10 minutes later. He did not hear any sounds prior to hearing the sirens.

2. ROBERT MORALES

Robert Morales was interviewed by Deputy Joseph Sharif shortly after the incident and more fully interviewed by Detective Michalec later that same evening. Mr. Morales related that he worked as a tow truck driver and had been dispatched to the area to assist a motorist. He was not familiar with the area, so he pulled over on North Ventura Avenue to look up directions to the motorist. He parked along the western curb of the street facing south.

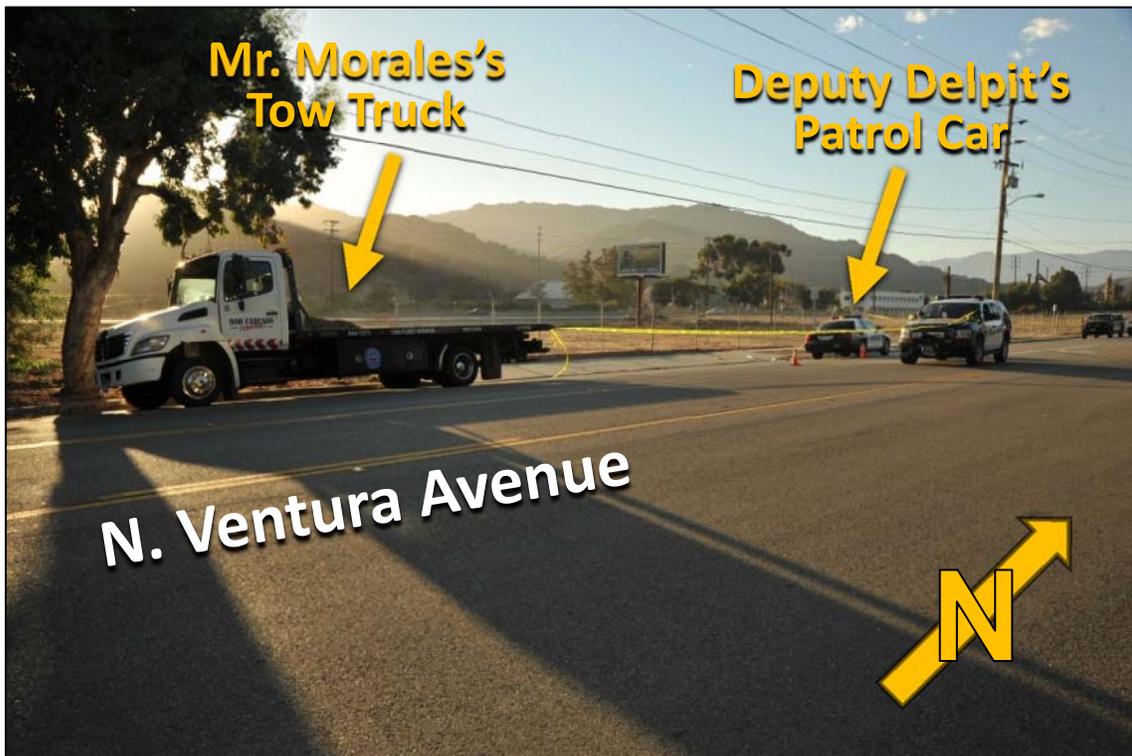
Through his front windshield, he noticed a sheriff's patrol car driven by a female deputy (Delpit) driving north on the western side of North Ventura Avenue. He then noticed a male subject (Costa)⁵ walking northbound on the western sidewalk. Costa was displaying

⁵ Mr. Morales did not know the names of any of the individuals involved in the incident, but their names are used for clarity.

strange behavior which included a hand motion simulating masturbation although there were no genitals exposed.

Deputy Delpit approached Mr. Morales's tow truck as he was still driving. She activated the overheard emergency lights of her patrol car and drove around the tow truck.

Mr. Morales stopped his truck and parked after she passed him. She then stopped her patrol car next to the western sidewalk behind (north of) Mr. Morales's tow truck.



Deputy Delpit's patrol car and Mr. Morales's tow truck

Mr. Morales looked in his rearview mirror and saw that Deputy Delpit and her dog (Dano) had gotten out of the patrol car. He heard Deputy Delpit tell Costa to "sit down." Mr. Morales turned and looked out of his tow truck's rear window and was able to see Costa "lunge" at Deputy Delpit. Dano then bit Costa's left arm.

Costa began wrestling with Dano, hitting the dog. It appeared to Mr. Morales that Dano's bite was not bothering Costa. Mr. Morales stepped onto the driver's step of his truck and turned to watch the contact between Deputy Delpit and Costa. He saw Costa move closer to Deputy Delpit. Costa then swung his right fist at Deputy Delpit and "cracked her right in the nose." Mr. Morales called out to Deputy Delpit and asked if she needed his help but he did not hear her respond.



View of Deputy Delpit's patrol car from Mr. Morales's tow truck (photo taken at night)

Mr. Morales then saw Costa reach for Deputy Delpit's gun. Deputy Delpit staggered back away from Costa and was able to remove her handgun from its holster. She yelled "Stop!" at Costa. Costa continued lunging toward Deputy Delpit with Dano still hanging

on his left arm. Costa was within five feet of her and “was trying to hit her again.” Mr. Morales added that “the dog wasn’t fazing him” and Costa could have easily hit her again. Deputy Delpit then fired her gun at Costa.

Costa was hit in the stomach but remained on his feet. Costa continued struggling with Dano. Costa began yelling, “You fucking bitch, I’m going to kill you, you’re gonna fucking die!” Deputy Delpit was shouting at Costa to leave the dog alone. Costa slowly went to his knees and then went to the ground.

Deputy Delpit then released Dano from the bite. She told Mr. Morales to call 911 and also asked him not to leave since he had witnessed the incident. Deputy Delpit was bleeding from both nostrils and Mr. Morales believed that she was in shock. Another deputy (Deputy Dent) arrived on scene and approached Costa with his baton out. Deputy Delpit told Deputy Dent, “He’s down,” and Deputy Dent handcuffed Costa and rolled him over and checked him for injuries. Mr. Morales summarized the incident to Deputy Sharif as “He [Costa] attacked her, the dog attacked him, and he socked her in the face . . . and he tried to reach for her gun and she grabbed her gun and she shot him.”

3. DEPUTY DANIELLE DELPIT

On September 7, 2013, at approximately 9:15 p.m., Deputy Delpit was interviewed by Detectives Brantley and Michalec. Deputy Delpit had been treated at the hospital for a concussion and sprained finger that she received during the incident but was given no pain medication. She wanted to give a statement that evening so she returned to the scene of the incident and conducted a voluntary walkthrough of the event.⁶

⁶ Deputy Delpit has been a peace officer with the Sheriff’s Office since 1994. In 2004, she received training in crisis intervention and separate training in contacting mentally ill and developmentally disabled persons. Crisis intervention training seeks to improve the outcomes of police interactions with people in mental health crises and is based on a program that began in Memphis, Tennessee in 1988. The training for law enforcement focuses on recognizing mental illness and how to de-escalate mental health crisis situations. (National Association on Mental Illness CIT Toolkit. See also <http://www.venturacountycit.org/index.html>)

Deputy Delpit said, on September 7, 2013, she was working patrol with her canine partner, Dano. She began her shift at approximately 8:15 a.m. She drove a marked sheriff's patrol car and was dressed in tan and green sheriff's uniform with a badge and patches identifying her as a Ventura County sheriff's deputy.

At approximately 4:15 p.m., she received a radio call regarding a male subject standing in the middle of North Ventura Avenue near Crooked Palm Road. The subject was further described as waving his arms and talking to himself. Deputy Delpit was dispatched to respond to the call along with Senior Deputy Beauvais.

Deputy Delpit was the first deputy to reach the area. She drove south down Ventura Avenue and spotted a subject (Costa)⁷ walking northbound on the western sidewalk just south of McKee Street. Costa appeared to be talking to himself, waving his arms around and "doing weird stuff . . . on the outer portion of his body."

Deputy Delpit drove past Costa, then turned around and began driving north on the west side of the street while she watched his behavior. Costa continued walking north and continued talking to himself and waving his arms. Deputy Delpit believed Costa was not in a normal mental state.

At one point, Delpit stopped her patrol car and exited with Dano. She called out to Costa "Sheriff's Department! What's going on? What's your name?" Costa turned around and made strange facial expressions but kept walking north. Deputy Delpit and Dano returned to her car and she contacted dispatch. Based on her observations of Costa, she requested

⁷ Deputy Delpit had no prior contact with Costa, did not know his name, and did not use Costa's name in her interview. Costa's name is used for clarity.

that dispatch limit the radio channel to emergency radio traffic and requested that Senior Deputy Beauvais respond with lights and sirens activated.

Deputy Delpit continued to slowly drive behind Costa as he continued walking north. A tow truck drove southbound on North Ventura Avenue, then stopped and parked on the western side of the street. The tow truck driver stayed in his cab and she drove around the tow truck while still following Costa. Costa then came to a stop and turned in Deputy Delpit's direction.

Deputy Delpit exited her patrol car with Dano. She was approximately 25 feet away from Costa and she had a seven-foot leash on Dano. Costa began moving toward her and she began walking toward Costa. As she passed her driver's door, she stated "Sheriff's Department! Stop!" Costa then accelerated down the sidewalk toward her. Costa made a fist with one hand and raised it in the air as he rushed toward her. She was afraid he was going to strike her with his fist so she sent Dano to bite Costa.

Dano ran at Costa and bit him on the left arm. In Deputy Delpit's experience, Dano's size, momentum and force should have taken Costa to the ground. Instead, Costa was unaffected by the bite. Costa spun while Dano was biting his left arm and punched Deputy Delpit in the face with his right fist.

Costa's punch landed in the center of Deputy Delpit's nose. She heard a "pop" noise when his fist connected with her face. She felt like she was losing consciousness⁸ and, by this time, Costa was right "on top of [her]." She then felt pressure on her gun belt which she believed was Costa pulling at her gun.

⁸ Deputy Delpit is unsure if she actually blacked out for a moment, or just felt like she was going to lose consciousness.

Deputy Delpit struggled to get her handgun unholstered. She felt what she believed was Costa grabbing at the gun as she pulled it free.⁹ She felt like she was on the verge of blacking out and was afraid Costa was going to kill her. She wanted to get away from him and fired one shot to create distance between them. The shot struck Costa, who immediately backed away from her.

Costa remained standing and continued to fight with Dano who was still biting his left arm. Deputy Delpit holstered her handgun and told Costa to stop attacking the dog. Costa continued struggling with Dano, then slid to the ground. Deputy Delpit did not recall Costa making any statements during this time, or during the entire encounter.

Once Costa was on the ground, Deputy Delpit approached him. She put his right arm behind his back and had Dano release his bite. Deputy Dent, the first backup deputy on scene, arrived at that point and took control of Costa.

4. DEPUTY BRIAN DENT

On September 7, 2013, Deputy Dent was assigned to patrol in the unincorporated area of Ojai. At approximately 4:33 p.m., he heard Deputy Delpit and Senior Deputy Beauvais dispatched to a call of a suspicious subject standing in the road near North Ventura Avenue and Shell Road. He was approximately 10 miles away and began driving toward the call location in case the dispatched deputies needed any help.

At approximately 4:45 p.m., Deputy Dent heard Deputy Delpit request Senior Deputy Beauvais to respond “Code 3” (with overhead emergency lights and siren activated). Deputy Dent also went Code 3 and continued driving to Deputy Delpit’s location. He heard a garbled transmission from Deputy Delpit that sounded like she and her canine partner, Dano, were struggling with someone.

⁹ Deputy Delpit suffered a sprained right index finger in the incident and believed the injury occurred when she and Costa were struggling for her gun.

Deputy Dent arrived on scene at 4:49 p.m. and was the first assisting deputy to arrive. He stopped his patrol car next to Deputy Delpit's patrol car, grabbed his baton and sprinted around the back of his patrol car. He saw Deputy Delpit who appeared to be trying to pull Dano off of a person (Costa)¹⁰ lying on the ground. He was unable to see what Costa was doing and, based on the radio transmissions he had heard, believed Costa was still fighting with Deputy Delpit and Dano. He began moving to assist Deputy Delpit and she told Deputy Dent that Costa had been shot. She also asked Deputy Dent to handcuff Costa.

Deputy Dent handcuffed Costa and noticed a bite injury on Costa's left arm. Costa was breathing with his eyes open but did not respond to Deputy Dent when he asked Costa questions.

Deputy Dent then turned to check on Deputy Delpit. She appeared very upset and her hands were shaking. Her nose was bleeding and the blood was flowing down her face and onto her hands. She told Deputy Dent that Costa had hit her and tried taking her gun. She also mentioned that her right index finger was hurt.

Deputy Dent returned to check Costa for injuries. He lifted his shirt and saw what appeared to be Costa's intestines protruding from a hole in his abdomen. There was no blood coming from the wound and Costa was breathing. He believed that Costa's injuries were beyond the scope of his first aid training so he did not attempt to provide first aid. He took photographs of Costa at the scene.

¹⁰ Deputy Dent had no prior contact with Costa, did not know his name, and did not use Costa's name in his interview. Costa's name is used for clarity.

Other police officers and sheriff's deputies began arriving at the location. They began blocking off the street. A fire engine arrived and the firefighters began first aid on Costa, who was eventually transported by ambulance to the Ventura County Medical Center.

Deputy Dent located a single bullet casing southeast of Deputy Delpit's patrol car and Senior Deputy Beauvais marked its location. Deputy Dent then began a crime scene log. He drove Deputy Delpit to drop off Dano at her home and then drove her to Community Memorial Hospital for treatment. At the hospital, he noticed that Deputy Delpit's gun belt was crooked. Deputy Delpit told him that belt was crooked because Costa had been pulling on the belt and grabbing at her gun.

5. PARAMEDIC BRYAN CARREON

Bryan Carreon was a paramedic employed by Lifeline Medical Transport. On September 7, 2013, his ambulance crew was dispatched to an officer-involved shooting on North Ventura Avenue. When they arrived, they drove past a patrol car (Deputy Delpit's)¹¹ and parked near a tow truck. Fire personnel were already on scene and appeared to be performing CPR on the patient (Costa). Paramedic Carreon approached Costa and noticed a single gunshot with an evisceration — some part of his organs protruding through the bullet hole. Paramedic Carreon also noticed an injury on Costa's left arm. He initially believed it to be a second gunshot wound but then learned that it was from a dog bite. They assisted with CPR and treated him for cardiac arrest on scene, then transported Costa to the hospital.¹²

¹¹ Paramedic Carreon did not know the names of any of the individuals involved in the incident, but their names are used for clarity.

¹² The ambulance left the scene with Costa at 5:16 p.m. and arrived at the Ventura County Medical Center at 5:22 p.m. CPR was continuously provided. Costa was rushed to a trauma room when he arrived at the hospital and was pronounced dead at 5:27 p.m.

While on scene, Paramedic Carreon overheard an unnamed subject stating that Costa had been shouting that he was “gonna kill” the deputy. He was informed that Deputy Delpit had been punched in the face and other emergency medical personnel examined her.

6. MIKE AND JOYCE COSTA

Mike Costa is Devon Costa’s biological father and Joyce Costa is Devon Costa’s stepmother. On September 7, 2013, they spoke with Ventura County Sheriff’s Detective Brantley and Sergeant Gleason who arrived to inform them of Costa’s death. The detectives identified themselves as peace officers and began speaking with the Costas. Mr. Costa said he is Devon Costa’s father and explained that his son, Devon, was “5150”¹³ having a diagnosis of “psychosis” since he was 19.

The detectives informed Mr. Costa that his son had been killed that evening and briefly summarized the circumstances of his death. Mr. Costa informed the detectives that Devon Costa was psychotic and had been prescribed medications which he would refuse to take. Mr. Costa denied that his son had experienced violent outbursts in the past. He mentioned that his son had used drugs such as “mushrooms” (psilocybin) in the past and expected that they would find traces of psilocybin or methamphetamine in his son’s system.

Joyce Costa relayed how Devon Costa would have solitary conversations where he would talk to himself. She reported that his mental condition had appeared to be deteriorating when he had lived with them. She detailed incidents in the past where Costa had threatened to kill her a few times and threatened to kill his brother. She admitted that she had not wanted to be alone with him after those threats.

¹³ Referring to Welfare and Institutions Code section 5150, dealing with detaining persons involuntarily who are posing a danger to themselves or others due to mental health disorders.

Mr. Costa believed that he last saw his son approximately two weeks ago. His son lived on the streets and occasionally stayed at his mother's house. Mr. Costa said Devon Costa was a patient of Dr. Rosenthal and thought his son had last seen Dr. Rosenthal in June 2013. Mr. Costa admitted that he had tried to have his son detained pursuant to section "5150" before but that his son was "really smart" and able to talk his way out of being detained.

7. JANET COSTA

Devon Costa's mother, Janet Costa, was also interviewed that evening by detectives. She mentioned Costa had been a smart young man and that his mental illness had suddenly appeared. Costa was perfectly fine and normal on his medication but refused to take it. She added that when he was off his medication he was unable to follow "the most basic of rules of being a human."

III. PHYSICAL EVIDENCE

A. CRIME SCENE

The crime scene consisted of a small area around Deputy Delpit's patrol car. The physical evidence located included a single expended .40 caliber casing and a blood drop on the sidewalk. Other physical evidence at the scene was Costa's footwear, his clothing which had been removed during medical treatment, and medical supply waste.

Numerous photographs were taken, including photographs of the view from Morales's tow truck looking toward Deputy Delpit's patrol car.

B. TOXICOLOGY REPORT

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

Laboratory. Analysis of his blood showed that his blood contained caffeine and nicotine, but no evidence of any controlled substances or alcohol was located in his blood.

C. AUTOPSY

On September 7, 2013, at approximately 5:27 p.m., Devon Costa was pronounced dead at Ventura County Medical Center. An autopsy was performed on September 9, 2013, by Dr. Ann Bucholtz, a forensic pathologist at the Ventura County Medical Examiner's Office. Dr. Bucholtz located a single gunshot wound that entered in the middle of Costa's abdomen. The bullet passed through the small bowel and inferior vena cava, and lodged in Costa's spine. Dr. Smith concluded that Costa died from a gunshot wound of the torso 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 are lawful.

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

CALCRIM 550 sets forth the specific jury instructions on self-defense. It provides that a person is not guilty of murder or manslaughter if 1) that person "reasonably believed that [the person] [or] someone else . . . was in imminent danger of being killed or suffering great bodily injury"; 2) that person "reasonably believed that the immediate use of deadly

force was necessary to defend against that danger”; and 3) that person “used no more force than was reasonably necessary to defend against that danger.”

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. DEVON COSTA’S CRIMINAL CONDUCT

Devon Costa 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 on a Peace Officer in violation of Penal Code section 245(c)
- Resisting a Peace Officer in violation of Penal Code section 148(a)
- Resisting an Executive Officer in violation of Penal Code section 69.

Costa's bizarre and reckless behavior of walking in the street while holding his arms out, mimicking masturbation, and talking to himself may have also justified him being involuntarily detained pursuant to Welfare and Institutions Code section 5150(a).

V. ANALYSIS

On September 6, 2013, at 2:18 a.m., Devon Costa was walking in the street in Simi Valley and exhibiting bizarre behavior. He was taken into custody pursuant to Welfare and Institutions Code section 5150(a) and transported from Simi Valley to Ventura for a mental health evaluation based on the irrational behavior he was demonstrating. The mental health professionals who evaluated him did not feel Costa was a threat to himself or others at that time and released him at approximately 10:10 a.m.

Approximately 30 hours later, Costa was again walking in the middle of a street in the city of Ventura. He appeared to be in some sort of altered mental state, talking to himself and making hand gestures. Cars honked and swerved to avoid him and bystanders called the police out of concern for him.

Deputy Delpit responded to the scene and located Costa walking on the sidewalk. At this time, he was still exhibiting an erratic state of mind. Her observations of Costa acting in a bizarre manner, coupled with the information provided by the dispatch call, warranted Deputy Delpit contacting Costa to appraise his mental well-being and determine whether Costa was capable of taking care of himself.

Deputy Delpit called out to Costa, who made odd facial expressions then ignored her. Believing this contact may become more serious, she requested the radio channel be cleared for emergency traffic only and asked for her backup to come with the lights and

sirens activated. Delpit exited her patrol car and identified herself to Costa. Costa reacted by charging her.

At this point, Deputy Delpit was facing Costa, whose irrational behavior had turned to aggression directed at her. His refusal to comply with her requests had denied her the opportunity to evaluate his mental state. Deputy Delpit attempted to stabilize the situation with non-lethal force by sending Dano to bite Costa and take him to the ground.

Although Dano successfully bit onto Costa's arm, the bite had no effect on Costa's aggressive charge towards Deputy Delpit. Costa spun and punched Deputy Delpit in the face hard enough to cause a concussion and make her fear she was losing consciousness. As she was bleeding from the nose, Deputy Delpit felt Costa grab her gun.

The proper focus of this analysis is not Devon Costa's mental illness, but rather, whether the facts and circumstances as perceived by Officer Delpit caused her to reasonably believe that her life was in imminent risk of great bodily injury or death. Prior to firing her weapon, Deputy Delpit was under an attack which included a closed fist blow to her face and an active attempt to take away her firearm. During his assault, Costa subjected Deputy Delpit to imminent danger of great bodily injury or death and created a situation where she reasonably believed in the need to use lethal force to defend herself against that danger. Based on her reasonable fear, she managed to unholster her handgun while Costa was assaulting her and fire a single shot at Costa, striking him in the abdomen. After Costa retreated, Deputy Delpit did not fire her weapon again.

Under the set of facts and law governing self-defense, Deputy Delpit reasonably defended herself and justifiably responded to the threat of imminent danger of great bodily injury or death at the time she discharged her weapon at Devon Costa.

VI. CONCLUSION

It is the conclusion of the District Attorney that:

- A. At the time Deputy Delpit fired her handgun at Devon Costa, Deputy Delpit honestly and reasonably believed that she was in imminent threat of death or great bodily injury.
- B. Deputy Delpit honestly and reasonably believed that the immediate use of deadly force was necessary to defend herself against the danger posed by Devon Costa at the time she fired her weapon.
- C. Deputy Delpit used no more force than was reasonably necessary to defend against the apparent danger posed by Devon Costa.
- D. The fatal shooting of Devon Costa by Deputy Delpit was a justifiable homicide.