

OFFICE OF THE DISTRICT ATTORNEY

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REPORT ON THE SEPTEMBER 6, 2013
SHOOTING OF MICHAEL DELUCA
BY PORT HUENEME POLICE SERGEANT CHRIS
GRAHAM AND OFFICER ROBIN MATLOCK

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I. INTRODUCTION

At approximately 4:10 a.m. on September 6, 2013, Michael DeLuca drove his truck into a palm tree at Port Hueneme Beach. The truck then became stuck in the sand. Port Hueneme Police Officer Robin Matlock and Sergeant Chris Graham were dispatched to the scene.

Officer Matlock was the first to locate the truck. DeLuca, the only occupant, was still seated in the driver's seat. Officer Matlock told DeLuca to stay in the truck. Sergeant Graham arrived on the scene as DeLuca was stepping out of his truck.

Officer Matlock again commanded DeLuca to stay in the truck at least three times. DeLuca, who appeared impaired, ignored those commands. Sergeant Graham began approaching DeLuca who stated, "Don't do that," and added, "I've got a gun." Sergeant Graham then unholstered his handgun, pointed it at DeLuca and requested expedited backup over his radio. Officer Matlock unholstered her Taser and aimed it at DeLuca.

Sergeant Graham ordered DeLuca to keep his hands up. Instead, he jumped toward Sergeant Graham. Officer Matlock fired her Taser at DeLuca. One probe lodged in DeLuca's left shoulder but it is unclear whether the other probe made contact with DeLuca. DeLuca then made a forward flip onto the ground. Seeing that the Taser was ineffective, Officer Matlock dropped her Taser and unholstered her handgun.

While on the ground, DeLuca extended his right arm in a gripping fashion, as though he was aiming a gun. He first pointed his arm at Officer Matlock, then at Sergeant Graham, then moved it back toward Officer Matlock. Based on DeLuca's statement that he had a gun, Sergeant Graham feared DeLuca was about to fire a gun at Officer Matlock and

fired four shots at DeLuca. Officer Matlock heard Sergeant Graham yell “gun!” and also fired one shot at DeLuca. DeLuca 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 Robert Coughlin, Kimberly Michael, and Sonia Sanchez responded to the shooting scene and consulted with the investigating officers.

The Port Hueneme Police Department conducted an investigation of the shooting, which included interviewing witnesses, collecting physical evidence, and photographing the area of the shooting. Both involved officers individually conducted a voluntary interview with criminal investigators and described the incident.

The Port Hueneme Police Department’s investigation reports were then submitted to the District Attorney’s Office for a determination of whether the shooting of Michael DeLuca was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney’s review was limited to those issues. Several requests for follow up investigation were made, and on May 22, 2015, forensic scientists from the Ventura County Sheriff’s Forensic Science Laboratory issued an official report detailing the results of their ballistics testing and comparison of the different cartridge cases located at the scene with the two handguns associated with this investigation. Based on that additional information, the District Attorney’s Office issues this current report.

The District Attorney’s evaluation included reviewing approximately 1,000 pages of reports and documents which included interviews of police and civilian witnesses,

diagrams, photographs, numerous recorded interviews and records, recordings of radio transmissions, and examination of the scene of the shooting.

Based on all the available evidence, the District Attorney's independent investigation, and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Michael DeLuca by Port Hueneme Police Sergeant Chris Graham and Police Officer Robin Matlock was justified and not a criminal act.

II. STATEMENT OF FACTS

A. MICHAEL DELUCA

Michael DeLuca was born November 17, 1959.¹ DeLuca won the New York State Golden Gloves in 1979 and had a short career as a professional boxer. He later worked as a bodyguard. Online videos of DeLuca show his boxing and martial arts prowess. At the time of his death, he was renting a room in a mobile home in Thousand Oaks.

A psychiatrist who was treating DeLuca told investigators of the Medical Examiner that she had started treating DeLuca in May 2012. At the time of his death he had been prescribed citalopram, clonazepam, lamotrigine, and amphetamine. DeLuca had told her that he had carried a gun with him in the past due to paranoia, but had stopped carrying the gun. In April 2013, DeLuca told her that he had tried to commit suicide. In July 2013, he told her nurse practitioner that lamotrigine was working and that he no longer felt suicidal.

¹ DeLuca legally changed his birth name from Michael Maloney to Michael DeLuca.

B. ARGUMENT WITH MELISSA GLUCK

DeLuca had been in a periodic dating relationship with Melissa Gluck. They had recently begun an attempt to reconcile their relationship. Ms. Gluck was depressed because her son had moved out of the country and would be gone for a year.

On the evening of September 5, 2013, DeLuca and Ms. Gluck ran a few errands together, then stopped by the Clubhouse Sports Bar and Grill in Camarillo. DeLuca drank three 22-ounce beers and was rude to the bartender. DeLuca also placed a call to his mother about this time in which he may have expressed suicidal thoughts.²

When they arrived back at Ms. Gluck's home, she asked him to leave. DeLuca was upset and told Ms. Gluck that he was going to kill himself by taking all of his medication. He then left, "peeling out" as he drove away.

C. COLLISION

At approximately 4:10 a.m. on September 6, DeLuca drove his truck into Hueneme Beach Park's Parking Lot A, driving over a curb, onto the sand, and striking a palm tree. DeLuca then began trying to reverse the truck from its location but it became stuck in the sand. Numerous bystanders heard the crash and called the police to report the collision.

Port Hueneme Police Sergeant Chris Graham and Officer Robin Matlock were dispatched to investigate. They drove to the area in different patrol vehicles. When they reached Surfside Drive, Sergeant Graham turned right and Officer Matlock proceeded into Beach Parking Lot A.

² On September 6, 2013, at approximately 6:30 p.m., DeLuca's sister texted him and referred to his conversation with his mother the evening before, stating "Mom called she is worried about u are u ok don't do anything dumb u have two boys a mom and two sisters who love u very much." DeLuca's sister and mother would not agree to be interviewed by District Attorney investigators about the contents of the conversation.

D. FIRST CONTACT

As Officer Matlock entered the parking lot entrance, she spotted DeLuca's truck in the sand near a palm tree. DeLuca was sitting in the driver's seat of the truck. As Officer Matlock got out of her patrol car, DeLuca started to get out of the truck. She told him to stay inside the truck, but DeLuca exited the truck and fell back against it. His movements and appearance indicated to her that he was under the influence of alcohol or some sort of drug. Based on DeLuca's appearance and failure to comply with her commands, Officer Matlock unholstered her Taser. At that time, she was approximately 30 feet away from DeLuca, near the front of her patrol car.



DeLuca's Truck in Parking Lot A

Sergeant Graham arrived on scene as DeLuca was exiting the truck. He heard Officer Matlock tell DeLuca to stay in his truck. Instead, DeLuca exited and leaned against the truck. Sergeant Graham believed that DeLuca was likely under the influence of alcohol

based on his physical movements and the manner in which he leaned against the truck. Sergeant Graham walked around the front of his patrol SUV to a position approximately 15 feet from DeLuca.

Sergeant Graham asked DeLuca what was happening, then started to step closer to DeLuca. DeLuca told Sergeant Graham, “Don’t do that.” Sergeant Graham asked, “What?” and DeLuca repeated, “Don’t do that.” Sergeant Graham asked DeLuca what he meant and DeLuca calmly stated, “I’ve got a gun.”

Sergeant Graham immediately stepped back and notified dispatch over his radio that he was dealing with a subject with a gun. He unholstered his handgun, backed away and calmly told DeLuca to put his hands up. DeLuca looked at Sergeant Graham then rapidly moved in his direction.

As DeLuca moved forward, Officer Matlock fired her Taser at him.³ One of the probes connected with DeLuca but it was unclear whether the other probe made contact. DeLuca made a grunting sound, fell to the ground, then rolled onto his back. Seeing that her Taser was ineffective, Officer Matlock dropped her Taser and unholstered her handgun.⁴

E. THE SHOOTING

Once on the ground, DeLuca mimicked aiming a gun with his hands. It was later determined that he did not actually have a gun in his hands, but his declaration to the officers that he had a gun combined with his aggressive behavior caused Sergeant Graham to believe DeLuca had a gun in his hands. DeLuca pointed his hands which

³ The printout of Officer Matlock’s Taser shows a five-second discharge at 4:22 a.m. on September 6, 2013.

⁴ Officer Matlock had moved to within 10 to 15 feet of DeLuca when she dropped her Taser. Her Taser was located a little more than 10 feet from DeLuca’s body.

were in a gripped manner as if he was holding a gun in Officer Matlock's direction. DeLuca then moved his hands in the same fashion at Sergeant Graham, then back again toward Officer Matlock. At this moment, Sergeant Graham was afraid that DeLuca was going to shoot Officer Matlock so he shouted, "Gun!" and fired four times at DeLuca. He ceased firing when DeLuca fell back to the sand then requested expedited medical personnel to come to the scene.

Officer Matlock saw DeLuca moving his arms and was afraid he was grabbing for the gun he stated he had. From her vantage point, she did not see a gun in his hands but heard him state that he had a gun and saw his aggressive hand movements toward his waistband. She also heard Sergeant Graham shout, "Gun!" Based on those circumstances, she believed DeLuca was about to pull a handgun from his waistband and shoot at them. She fired one shot at DeLuca and ceased firing as he fell back to the sand.

F. ADDITIONAL POLICE RESPONSE

Other police officers arrived at the scene, approached DeLuca and searched him. A crime scene was established and marked off. Emergency medical personnel arrived and provided treatment. DeLuca was pronounced dead at 4:27 a.m.

G. WITNESS STATEMENTS

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

1. MELISSA GLUCK

a. SEPTEMBER 6, 2013, BARONI INTERVIEW

Melissa Gluck was initially interviewed by Supervising Deputy Medical Examiner James Baroni in the early afternoon of September 6, 2013.⁵ He informed her of the general circumstances of DeLuca's death and she responded that she thought he was going to tell her that DeLuca had committed suicide.

Ms. Gluck related that DeLuca was married to Lisa, who lived in New York. DeLuca lived in Thousand Oaks. DeLuca and Lisa had two sons who lived in the Los Angeles area. Ms. Gluck and DeLuca had been dating off and on for the past seven years. They were broken up at the time of the incident, but DeLuca had wanted to reconcile.

Ms. Gluck had last seen DeLuca on the evening of September 5, 2013. They had run some errands together and stopped at the Clubhouse Sports Bar and Grill in Camarillo. DeLuca was in a bad mood. He was very angry and rude to the bartender. When they returned to Ms. Gluck's residence, she told DeLuca that he needed to leave. DeLuca made some threats about overdosing on his medication and killing himself. He "peeled out" when he drove away at approximately 8:00 p.m. and that was the last time she saw him. She tried to call him several times but he never answered his phone.⁶

DeLuca had made similar threats about committing suicide in the past but she was unaware of him ever having tried to kill himself. She added that DeLuca used to own guns but that they were taken away and given to his sons due to his suicidal threats.

⁵ The interview was not recorded.

⁶ Ms. Gluck discovered that DeLuca had left his phone in her car and gave DeLuca's phone to Supervising Deputy Medical Examiner Baroni.

Ms. Gluck also stated that DeLuca had a medical history of bipolar disorder and was on medication for that disorder.

b. SEPTEMBER 6, 2013, STARNA INTERVIEW

Ms. Gluck was also interviewed by Port Hueneme Police Sergeant Eric Starna and Detective Nora Starna at approximately 7:06 p.m. on September 6, 2013.⁷ Ms. Gluck's mother was also at the home during the interview.

Ms. Gluck stated that she and DeLuca had been dating since 2007. She last saw DeLuca on September 5, between 5:00 p.m. and 8:00 p.m. Ms. Gluck and DeLuca ran some errands and stopped for drinks at the Clubhouse Sports Bar and Grill in Camarillo. Ms. Gluck related that DeLuca "doesn't drink at all" so she was surprised when he ordered a beer at the bar. Ms. Gluck related that DeLuca became impatient waiting for his glass of beer. Ms. Gluck left halfway through her beer in order to go to a store next door. She later returned to pick DeLuca up and they returned to her residence.

Ms. Gluck said she was sad that evening because her son had recently left for Ireland. DeLuca had wanted to make her feel better but she was "weepy" and not in a good mood. She eventually asked DeLuca to leave. He left her residence at approximately 8:10 p.m. Ms. Gluck tried to call him several times throughout the night and into the morning but never answered the phone. She later discovered he had left his cell phone in the center console of her car.

⁷ The interview was recorded.

Although DeLuca told her that he did not want to leave, Ms. Gluck denied that DeLuca was upset when he left. She also denied DeLuca said anything to her about his taking all of his medication that evening. She explained that, in the past, “if we've had a fight and he's wanted to, uh, you know make me get back with him, he would mention things about, you know, uh, taking more of his pills or something” but denied him making such a statement that night and described DeLuca as “okay” when he left. She described him as “talking to his mom when he left.”

Ms. Gluck spoke about DeLuca’s medication, explaining that he had been on medication “lifelong” for depression issues. She knew he saw a psychiatrist and was on medication, but she did not know if DeLuca had actually been diagnosed with a specific condition.⁸

Ms. Gluck denied that DeLuca had ever been aggressive with her except for one incident during a breakup when he took the door off a refrigerator after she had told him that the refrigerator was half hers. She admitted that DeLuca had owned a gun in the past but stated that “I did make him get rid of it.”

2. MATTHEW KEARNS

Matthew Kearns worked as a bartender at the Clubhouse Sports Bar and Grill in Camarillo. He was interviewed by Port Hueneme Police Sergeant Eric Starna and Detective Nora Starna in the early evening of September 6, 2013.

⁸ DeLuca’s psychiatrist, Lorna Barte MD, spoke with Supervising Deputy Medical Examiner Baroni and confirmed that DeLuca had been diagnosed with bipolar disorder and personality disorder NOS, and attention deficit disorder. She also stated that DeLuca had anger issues and, in the past, had carried a gun due to paranoia issues but had stopped carrying the gun. He had attempted suicide in the past but was last seen in Dr. Barte’s office on July 18, 2013, and stated that he was not suicidal at that time.

Kearns had worked the evening shift at the Clubhouse Sports Bar and Grill on September 5, 2013. At approximately 7:30 p.m. that night, a male customer came in and ordered a 22-ounce beer. Kearns identified the customer as DeLuca from a photograph. He recalled DeLuca because he drank his first 22-ounce beer in about five minutes, which Kearns felt was very fast.

Shortly after DeLuca arrived, he was joined by a female who Kearns identified as Melissa Gluck from a photograph. Ms. Gluck left the bar before the third beer came.

Kearns recalled DeLuca as “aggressive and rude.” He also recalled DeLuca ordered a total of three 22-ounce beers which he drank within 20 to 25 minutes.⁹ At one point, DeLuca went outside and spoke on the phone. DeLuca’s signed credit card receipt indicates that he paid for the beers at 7:53 p.m.

3. CHARLES CRAIG

Charles Craig was interviewed on September 7, 2013, by Port Hueneme Police Detective Nora Starna. Mr. Craig lived across the street from the Port Hueneme Beach and witnessed the incident.

During the early morning hours of September 6, 2013, Mr. Craig was sleeping and wakened by the sound of an engine “gunning” as it crossed over the train tracks crossing Ventura Road. The engine sound was followed by skidding brakes and a crash. Mr. Craig looked out his bedroom window and did not see anything.

⁹ There was no alcohol in DeLuca’s blood at the time of his death.

He went onto his balcony.¹⁰ He saw a person (DeLuca) get out of a truck and ask an unknown person from a different car, “Are you okay?” That made Mr. Craig think it was the car that had crashed on the sand dunes. The car drove off after a few minutes. DeLuca then got back into his truck and started revving the engine to try to get the truck out of the sand.

Mr. Craig called 911 and eventually went outside where he was able to see the police officers contact DeLuca. Mr. Craig heard the female officer (Matlock) say, “Don’t get out of your vehicle, don’t get out of your vehicle.” DeLuca ignored the commands and got out of the truck.

The officers told DeLuca to put his hands over his head. DeLuca appeared impaired to Mr. Craig because he could barely stand and was backed up against his truck. DeLuca put his hands up briefly then dropped his hands and took a step toward Sergeant Graham. Mr. Craig was unsure if DeLuca intentionally walked forward or lost his balance and moved forward. When DeLuca was within eight feet of Sergeant Graham, Mr. Craig heard the sound of a Taser being fired. He thought that Sergeant Graham was the one who fired the Taser at DeLuca.¹¹

The Taser seemed to have no effect on DeLuca other than an initial “jolt” reaction. DeLuca continued walking toward Sergeant Graham. Mr. Craig then heard four shots fired and saw DeLuca fall to the ground. A few moments later, numerous other police officers began arriving at the scene. Mr. Craig never heard DeLuca say anything during the incident.

¹⁰ The distance from Mr. Craig’s location to the collision scene was approximately 227 feet.

¹¹ Mr. Craig was unable to distinctly see who fired the Taser but thought Graham was the one to fire the Taser. Taser records and evidence collected at the scene show that only Officer Matlock’s Taser was fired that night.

Mr. Craig went back inside and called 911 again to express his concern that another person might be in the truck or on the beach based on hearing DeLuca ask, “Are you okay?” when he got out of the truck.

4. MARK SANCHEZ

Mark Sanchez was interviewed by Port Hueneme Police Officer Rocque Lopez, Jr. on September 6, 2013 at approximately 6:10 a.m. Mr. Sanchez related that earlier that morning he was standing at the end of the Port Hueneme pier stargazing with binoculars. He heard the sound of a truck revving nearby. He turned and saw a truck drive into Parking Lot A for Port Hueneme Beach, jump the curb and strike a palm tree. The truck then unsuccessfully tried to back out of the sand berm. Mr. Sanchez called 911 and reported the collision, stating that “apparently a drunk driver has just crashed into a median over here.”

Mr. Sanchez observed a Port Hueneme Police car arrive on the scene and a female police officer (Matlock) begin inspecting the truck with a flashlight. Mr. Sanchez turned away and heard Officer Matlock shouting commands at a person still in the truck. Mr. Sanchez could not make out the specific words Officer Matlock was shouting. He then heard approximately six gunshots but did not see the shooting. He turned back around after the shots and, a short time later, saw additional police cars arrive at the scene.

5. JAMES GALLAGHER

James Gallagher was interviewed on the morning of September 6, 2013, by Reserve Officer Fernando Alonso. At the time, Mr. Gallagher lived approximately one third of a mile from the scene of the incident and was able to see the area from his window. Mr. Gallagher related that at approximately 4:12 a.m., he heard a vehicle traveling at a

high rate of speed. He looked out his window and saw a gray truck spinning its tires in the sand of Port Hueneme Beach Lot A.

Two police vehicles arrived at the location of the gray truck at approximately 4:20 a.m. The police ordered the driver (DeLuca) out of the gray truck. DeLuca got out of the truck and “involuntarily” backed up against the side of the truck a couple of times. DeLuca began walking towards the officers when Mr. Gallagher heard a "pop," which he believed was from a Taser. DeLuca fell to the ground and out of Mr. Gallagher’s field of vision. The officers approached the area where the driver had fallen. He heard the officers yelling “Don’t move!” He then heard approximately three gunshots and other police units arrived at the location.

6. SERGEANT CHRIS GRAHAM

On September 6, 2013, at approximately 11:10 a.m., Sergeant Chris Graham provided a voluntary interview to Sergeant Eric Starna and Officer Mike Hamrick. At the time of the incident, Sergeant Graham had been employed as a peace officer with the City of Port Hueneme for approximately 28 years. He began his shift at 4:30 p.m. on September 5, 2013, and was scheduled to work until 4:30 a.m. on September 6. He was working as patrol sergeant, meaning he supervised the four officers on the patrol shift but also responded to calls. He was dressed in a police uniform with patches and badges identifying him as a police officer and was driving a marked patrol SUV. His duty weapon was a .45 caliber handgun.

Sergeant Graham was inside the dispatch center at approximately 4:15 a.m. when he heard a call come in related to a traffic accident at the intersection of Surfside Drive and Ventura Road. He walked out to his patrol SUV and then drove next to Officer Robin

Matlock's patrol car.¹² Sergeant Graham told her that they were about to be dispatched to a traffic collision at Surfside Drive and Ventura Road.¹³

When they reached the intersection, Sergeant Graham turned right onto Surfside and Officer Matlock continued driving straight into the parking lot. She then broadcast over the radio that she had located the suspect vehicle in Parking Lot A at the beach. Sergeant Graham turned around and drove to her location.

Officer Matlock's patrol car was stopped on the road a short distance behind a truck which was on the sand next to a palm tree. Sergeant Graham stopped his car parallel to the truck but several yards away from it on the pavement. It was still dark out but the scene was illuminated by lights and spotlights from the police vehicles. Sergeant Graham exited his SUV and the truck driver (DeLuca) got out of the truck. Officer Matlock told DeLuca several times to get back into the truck but he did not comply.

DeLuca appeared very unsteady on his feet and Sergeant Graham believed him to be impaired. He explained that "it could have been drugs. Uh, I just know he was, he was impaired. There was something not right."

Sergeant Graham began walking toward DeLuca who told him, "Don't do that."

Sergeant Graham responded, "What?" and DeLuca repeated, "Don't do that." Sergeant Graham asked DeLuca what he meant and DeLuca responded, "I've got a gun."

¹² Officer Matlock had been parked in her patrol car in the police department's parking lot at the time of the call.

¹³ Port Hueneme Police Department maintains records of its calls and communications, including the time of each communication. Dispatch records show that Sergeant Graham and Officer Matlock were dispatched to Surfside Drive and Ventura Road at approximately 4:15 a.m. and arrived at the call at approximately 4:16 a.m.

Sergeant Graham immediately stepped away from DeLuca and unholstered his hand gun. He pointed his handgun at DeLuca. Sergeant Graham believed that he requested expedited backup and notified dispatch the suspect had a gun.¹⁴ He then commanded DeLuca to put his hands up.

DeLuca leapt toward Sergeant Graham. Sergeant Graham then heard the sound of a Taser being fired and believed that Officer Matlock had fired her Taser at DeLuca. The Taser did not appear to affect DeLuca, who then made a forward flip onto the sand toward Sergeant Graham.

While lying on the sand, DeLuca brought his right arm from his waist and extended it as if he was pointing a gun in Officer Matlock's direction. He then first pointed toward Sergeant Graham, then began moving his arm back towards Officer Matlock. Sergeant Graham explained that, due to DeLuca's actions and previous statements that he had a gun, he believed that DeLuca was armed and about to shoot Officer Matlock. Based on that fear, Sergeant Graham fired his handgun at DeLuca.

Sergeant Graham described the scene: "I'm now pointing my gun at him and I'm telling him 'Get your hands up.' I'm very calm with him, 'Get your hands up, get your hands up.' Um, he's just looking at me. He's looking, and then he leaped. He just leaped forward and as he does, I hear the Taser go off, the distinct noise, so Robin (Officer Matlock) has already deployed the Taser on him. Um, as she deploys the Taser, he, he, he does this --,

¹⁴ Port Hueneme Police Department's radio broadcasts are recorded, but there no time stamp to show the exact time the communication occurred. There are five broadcasts from the officers on scene during this incident. The first broadcast was Sergeant Graham notifying dispatch that they had reached the intersection of Surfside and Ventura Road. The next broadcast was Officer Matlock describing the suspect vehicle's license plate number and identifying the location as Lot A. The third communication was from Sergeant Graham: "Station 8 (dispatch) expedite backup, he's got a gun." The fourth communication was from Sergeant Graham advising that shots had been fired. The fifth communication was from Sergeant Graham asking for expedited response from emergency medical personnel and requesting that Oxnard Police Department be contacted for assistance.

not a somersault -- well, he does a flip into the sand in front of me. I already know he's got a gun. Uh, my light goes down, I no longer have my light in my hand, it's just my gun. Um, and as he does the flip and he goes around and I can hear the cycling of the, of the Taser going off, but it's not working because he's not, his body's not locked up. And I've used Tasers. I know what happens if you get a good hit. This guy's gonna be locked, he's not locked. He did the tumble, he's now on his back. As he does, as he's on his back, his right hand comes up from his waist area and he's looking back. He points, he points at Matlock, he points at me, and as he points back at Matlock, I'm thinking this guy's got a gun. He's gonna shoot Robin. I've got, so, so I started firing. Um, fired, fired, fired, uh, a couple times, and he, he quit, quit moving.”

After Sergeant Graham fired, DeLuca's hand dropped to the ground. Sergeant Graham stopped firing. When asked about the lighting conditions at the time of the shooting, Sergeant Graham indicated that when they arrived, “. . . there are streetlights . . . I might have even had my spotlight on him, I don't remember that, but I, but when he rolled into the sand, it's dark. Not pitch black, you could still see the body, I could see the movements, but it's a lot darker and there's no lights on him.” He broadcast over the radio that shots had been fired and requested expedited medical personnel. He kept his handgun aimed at DeLuca and asked Officer Matlock if she was okay. Other police officers arrived on scene and he holstered his handgun and backed away from the scene. He placed Officer Lopez in charge of the scene and requested another police officer to contact the Oxnard Police Department to assist with the incident. He then had no further involvement with the scene.

7. OFFICER ROBIN MATLOCK

On September 6, 2013, at approximately 12:25 p.m., Officer Robin Matlock provided a voluntary interview to Sergeant Eric Starna and Officer Mike Hamrick. At the time of

the incident, Officer Matlock had been employed as a peace officer for approximately nine years, eight of which had been with the City of Port Hueneme Police Department. On September 5, 2013, Officer Matlock began her shift at approximately 7:00 p.m. She was dressed in a police uniform with patches and badges identifying her as a police officer and was driving a marked patrol car. Her duty weapon was a .40 caliber handgun.

At about 4:15 a.m., Officer Matlock received a call to investigate a vehicle which crashed in a median in the area of the intersection of Surfside Drive and Ventura Road. She responded to the area with Sergeant Graham, who was in his own patrol vehicle.

When they reached the intersection, Sergeant Graham turned right onto Surfside Drive and Officer Matlock continued driving into the parking lot of Hueneme Beach Park. She spotted a gray truck with a camper shell on the median with its front end up against what she believed was a lamppost. She notified dispatch that she had located the vehicle which was the subject of the call. She broadcast the location and the truck's license plate over the radio. She was approximately ten feet from the rear of the truck. She stayed by her patrol car a few moments to try to determine if there was anybody in the truck before she approached it.

Officer Matlock began moving toward the truck when an individual (DeLuca) sat up in the driver's seat and started opening the driver's side door. Officer Matlock yelled at DeLuca, "Stay in the vehicle! Stay in the vehicle!" DeLuca continued exiting the truck and was mumbling something that Officer Matlock did not understand. Officer Matlock also noticed Sergeant Graham had arrived and was out of his patrol vehicle, standing to her left. She told DeLuca to stay in his truck. When he had fully exited, she told him to get back into the truck.

Officer Matlock described DeLuca as at least six feet tall and around two hundred pounds.¹⁵ DeLuca appeared under the influence of something. Officer Matlock explained her impressions of DeLuca. “Uh, this guy is not right. He came out of that car and uh, he just, he just did not seem right. He, he was real white and pasty. When he opened his mouth, it was all white. Um, he, he, was not, he’s like looking around just not, he was disheveled. He kind of just looked a little bit warm, like glisten a little bit. And he had one shoe on. I noticed that he only had one shoe on and I thought ‘Uh, this is not right. This is not right. Something, something’s up. He’s under the influence of something or he’s not –it just, it was not right.’ It was not a good feeling.”

DeLuca stood just left of his truck’s door. Based on his failure to comply with her commands and his demeanor, Officer Matlock unholstered her Taser and aimed it at DeLuca. Sergeant Graham then asked DeLuca what was happening. DeLuca responded, “I’ve got a gun. I’ve got a gun.” DeLuca then stepped toward Sergeant Graham while putting his hand behind his back. Officer Matlock then fired her Taser at DeLuca.

Officer Matlock further described DeLuca’s forward motion toward Sergeant Graham. “He took a quick forward step. Very quick. He didn’t lunge his whole body, he just took a quick forward step and I got him before he could get any further.”

As the Taser fired, DeLuca yelled. He then went to his knees and tucked and rolled toward Sergeant Graham. She described that “he made the noise, dropped to his knees, and it didn’t faze him like normal where people stiffen up and just drop to the ground and just, you know, just stop. He worked through it, went to his knees, he did like a roll toward Chris, towards Sergeant Graham, east towards him.”

¹⁵ DeLuca’s California Driver’s License listed his height as 6 feet 1 inches and his weight as 208 pounds. Officer Matlock is 5 feet 3 inches tall and weighs approximately 130 pounds.

Officer Matlock felt that DeLuca's roll likely dislodged any Taser barbs that had connected with him, so she dropped her Taser and unholstered her handgun. She explained what happened next. "He rolls over, um, like on his left side and I see him put his hand down and he props his left leg up as he's coming up. He swings his arm around to his waistband and his back's towards me as he swings his arm around and Chris (Sergeant Graham) yells 'Gun!' and we fired. I think Chris fired two."

Officer Matlock explained that after DeLuca said he had a gun, she felt that "when he dropped and rolled, he's gonna pull a gun, he's gonna kill us." She further explained that "I'm thinking this guy is on something, he is now in motion, he's gonna kill us. He has a gun. . . . He was very adamant about saying he had a gun twice. And when he made that movement and then everything that went down at that time and his whole demeanor and his actions, I don't know if he wanted to get killed or he was gonna kill us."

After the officers fired, DeLuca fell to the ground. She heard Sergeant Graham broadcast the term "expedite" but did not hear what he was asking dispatch to expedite. The first officers on scene were Senior Officer Frank Torpey and Officer Rocque Lopez, Jr. They approached DeLuca and patted him down for weapons. Police officers from the Oxnard Police Department also responded to the scene and Sergeant Graham and Officer Matlock were removed from the scene.

8. SENIOR OFFICER FRANK TORPEY

Senior Officer Frank Torpey was on duty and in the Port Hueneme Police Department's dispatch center at approximately 4:13 a.m. on September 6, 2013. Officer Rocque Lopez, Jr. was also in the dispatch center at the time. Senior Officer Torpey heard dispatcher Mike

Galvan receive a call regarding a possible collision near Surfside Drive and Hueneme Road. Sergeant Graham and Officer Matlock were dispatched to respond.

While in the dispatch center, he was able to hear that the suspect vehicle was located in Hueneme Beach Park Parking Lot A, then heard Sergeant Graham request expedited backup due to the driver having a gun.

Senior Officer Torpey and Officer Lopez ran to their patrol vehicles. Senior Officer Torpey heard Sergeant Graham report over the radio that shots had been fired and the suspect was down. They both drove to the scene with their overhead emergency lights and siren activated. They were the first assisting officers to arrive at the location.

Senior Officer Torpey approached the scene and saw Sergeant Graham and Officer Matlock standing, with their handguns unholstered and pointing at subject (DeLuca) who was on the ground. DeLuca was lying on his back near the front driver's door of a pickup truck.

Senior Officer Torpey and Officer Lopez approached the truck looking for other suspects. Senior Officer Torpey then approached DeLuca. He patted DeLuca down for weapons and noticed blood on his face and body. He checked DeLuca's pulse and felt a faint pulse. He noticed blood coming out of DeLuca's mouth, so he rolled DeLuca on his side to allow the blood to drain from his mouth. He continued to monitor DeLuca until medical personnel arrived to treat him. Paramedic Ryan Anderson examined DeLuca and pronounced him dead at 4:27 a.m.

Other police officers from Port Hueneme Police Department and Oxnard Police Department arrived on scene in order to secure the scene and begin the investigation.

Senior Officer Torpey helped designate the crime scene. He also discovered four expended casings on and around Sergeant Graham's patrol SUV, marking their locations.

Senior Officer Torpey arranged for Sergeant Graham and Officer Matlock to be separately transported back to the Port Hueneme Police Department in order to be interviewed. He helped cordon off the crime scene.

9. PARAMEDIC RYAN ANDERSON

Gold Coast Ambulance Paramedic Ryan Anderson was interviewed on January 13, 2015, by District Attorney Investigator Robert Coughlin. Paramedic Anderson did not have an independent recollection of the event at the time of the interview, but had prepared a report which he confirmed was accurate when he wrote it.

Paramedic Anderson's report indicated that he arrived at the scene at approximately 4:25 a.m. and examined the patient (DeLuca). DeLuca was unresponsive and had no pulse. Paramedic Anderson noticed that DeLuca had a bullet wound to his head. DeLuca was pronounced dead at 4:27 a.m.¹⁶

III. PHYSICAL EVIDENCE

A. CRIME SCENE

The crime scene was comprised of the area in and around DeLuca's truck, Sergeant Graham's patrol SUV and Officer Matlock's patrol car. DeLuca's truck was on a median next to the parking lot. The paint on the right front bumper appeared freshly scraped and

¹⁶ Paramedic Anderson did not recall who pronounced DeLuca dead, but Senior Office Torpey and Supervising Medical Examiner Baroni noted in their reports that Paramedic Anderson made the pronouncement.

a palm tree in front of the truck had damage consistent with an impact from the truck bumper.

A discarded Taser identified as belonging to Officer Matlock was located on the sand approximately 10 feet from DeLuca's body. A Taser probe with wire attached was located approximately 15 feet from DeLuca's body and 10 feet southwest of the Taser.

Four .45 caliber expended bullet casings were located on and around the front of Sergeant Graham's patrol SUV.¹⁷ A single .40 caliber expended casing was also located in the ice plant behind where DeLuca's truck had stopped on September 6, 2013.¹⁸

A search warrant was executed on the truck on September 8, 2013.¹⁹ A right sandal was located in the driver's foot well near the accelerator. There was also sand around the driver's side foot well. A key ring was located in the ignition, which had an attached metal canister containing several tablets that, by the manufacturer imprint, appeared to be lamotrigine.

¹⁷ A forensic scientist with the Ventura County Sheriff's Office Forensic Sciences Laboratory examined the four casings and determined they were all fired by Sergeant Graham's .45 caliber handgun. Sergeant Graham's handgun ejected casings to the right, indicating he would have been northeast of the casing's location at the time he fired. One casing (15) was located next to his patrol SUV's front passenger door, one casing (19) was located in the middle of his vehicle's hood near the windshield, one casing (17) was located next to the driver's side bumper of his patrol SUV, and one casing (18) was located just in front of his patrol SUV's driver's side mirror.

¹⁸ A forensic scientist with the Ventura County Sheriff's Office Forensic Sciences Laboratory examined the casing and determined it was fired by Officer Matlock's .40 caliber handgun. Officer Matlock's handgun ejected casings to the right, indicating she would have been northeast of the casing's location at the time she fired.

¹⁹ A search warrant was also executed at the home where DeLuca had been renting a room on September 8, 2013. DeLuca's sons had already been to the location and removed unspecified items in a duffle bag. DeLuca's sons declined to be interviewed by police. No medication for DeLuca was located at his home. An empty gun case, a holster, and two gun cleaning brushes were observed but no firearms were located

A computer and computer case were located on the front passenger seat. A blanket was stuffed into the front passenger foot well. When the blanket was removed, a knife was located in the front passenger foot well.

B. TOXICOLOGY REPORT

DeLuca'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, at the time of his death, DeLuca's blood contained no alcohol. However, DeLuca's blood but did contain 1270 ng/mL of amphetamine (Adderall), 380 ng/mL of citalopram/escitalopram (Celexa/Lexapro), 57 ng/mL of clonazepam (Klonopin), and 4.4 mcg/mL of lamotrigine (Lamictal).²⁰ His blood also tested positive for cannabinoids.

C. AUTOPSY

On September 6, 2013, at approximately 4:27 a.m., Michael DeLuca was pronounced dead at the scene. Later that same day, an autopsy was performed by Dr. Ann Bucholtz, a forensic pathologist at the Ventura County Medical Examiner's Office. Dr. Bucholtz located a Taser probe still in DeLuca's left upper shoulder, but did not remark on any other injury consistent with a Taser probe.²¹ Bucholtz located four distinct gunshot wounds. Gunshot wound number 1 entered next to DeLuca's left ear, passed through his left carotid artery and exited through the right base of his neck. The bullet then re-entered just below the exit wound and was recovered in the right clavicle. Gunshot wound number 2 entered the left upper chest near the shoulder and passed across the back without impacting either lung. The bullet was recovered from the mid upper back.

²⁰ The doses are all within therapeutic levels except the escitalopram/citalopram which appears above a therapeutic dose but not at an overdose level.

²¹ A Taser will typically fail to incapacitate a target if both probes do not make contact.

Gunshot wound number 3 entered the right abdomen and passed through the small bowel. The bullet was recovered from his pelvis. Gunshot wound number 4 was a grazing wound of the right middle finger and no bullet was recovered.²² Dr. Bucholtz found that DeLuca's death was a homicide, meaning a death caused by another person.

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 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

²² The numbering is only for identification purposes and does not reflect the order in which the injuries occurred.

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. DELUCA’S CRIMINAL CONDUCT

DeLuca 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:

1. Assault on a Peace Officer in violation of Penal Code section 245(c);
2. Threatening an Executive Officer in violation of Penal Code section 69;
3. Resisting a Peace Officer in violation of Penal Code section 148(a); and
4. Driving Under the Influence in violation of Vehicle Code section 23152(a).

V. ANALYSIS

On September 6, 2013, Michael DeLuca drove over a cement median, onto the beach and crashed his truck into a palm tree. He tried to back his truck away from the tree but ended up getting stuck even further in the sand around the tree. He was still in his truck when Officer Matlock and Sergeant Graham arrived at the scene of the crash.

Based on his appearance, the officers believed that DeLuca was under the influence of either alcohol, drugs, or both. When Sergeant Graham began approaching him, DeLuca threatened the officers by distinctly telling them he had a gun.

Although DeLuca did not, in fact, have a gun, this was not known to the officers at the time. The reasons why DeLuca would make that statement to the officers is unclear.²³ In making this statement, DeLuca changed the nature of the contact from a situation where the officers perceived DeLuca to be a person under the influence to a person in possession of a deadly weapon.

It is clear from Sergeant Graham's actions that he heard DeLuca's statement and perceived it as a threat. The instant DeLuca told the officers he had a gun, Sergeant Graham immediately stepped away from DeLuca, unholstered his firearm and pointed it at DeLuca. Dispatch records also indicate Sergeant Graham radioed for expedited backup and notified dispatch that DeLuca had a gun. Despite Sergeant Graham's attempt to create distance from DeLuca and drawing his service weapon, DeLuca made a sudden, movement advancing toward Sergeant Graham.

Officer Matlock observed DeLuca's actions as he put one hand behind his back and made an aggressive move towards Sergeant Graham while telling Sergeant Graham he was armed with a gun. Officer Matlock fired her Taser at DeLuca at the moment he made this quick and aggressive movement towards Sergeant Graham. Unfortunately, only one of the probes made contact with DeLuca's skin and the Taser failed to incapacitate him.

²³ This report previously addressed indications that DeLuca may have had suicidal intentions.

DeLuca went to the ground in what both officers perceived as a somersault-like movement. Once on the ground and while in this dark atmosphere, DeLuca appeared to be pointing a gun at Officer Matlock, then at Officer Graham, then again at Officer Matlock. Based on DeLuca's statement about a gun and his actions, Sergeant Graham believed that DeLuca was about to shoot Officer Matlock, so he yelled, "Gun!" and fired four times at DeLuca. He ceased firing when DeLuca fell to the sand.

At the moment Officer Matlock realized her Taser was ineffective, she dropped it and withdrew her handgun, aiming it at DeLuca. She perceived DeLuca make movements as if he was reaching for a gun at the same instant as she heard Sergeant Graham yell, "Gun!" She believed that DeLuca was going for his gun to fire at the officers so she fired one shot at him. She ceased firing when DeLuca fell to the sand.

Under the facts of this incident and the law of self-defense, Sergeant Graham reasonably defended himself and Officer Matlock. He justifiably responded to the perceived threat of imminent danger of great bodily injury or death at the time he discharged his weapon at Michael DeLuca. Similarly, Officer Matlock reasonably defended herself and Sergeant Graham. She justifiably responded to the perceived threat of imminent danger of great bodily injury or death at the time she discharged her weapon at Michael DeLuca.

VI. CONCLUSION

It is the conclusion of the District Attorney that:

1. When Sergeant Graham fired his handgun at Michael DeLuca, Sergeant Graham honestly and reasonably believed that he and Officer Matlock were in imminent threat of death or great bodily injury;

2. When Officer Matlock fired her handgun at Michael DeLuca, Officer Matlock honestly and reasonably believed that she and Sergeant Graham were in imminent threat of death or great bodily injury;
3. Sergeant Graham and Officer Matlock honestly and reasonably believed that the immediate use of deadly force was necessary to defend themselves against the danger posed to them by Michael DeLuca when they fired their weapons;
4. Sergeant Graham and Officer Matlock used no more force than was reasonably necessary to defend against the apparent danger posed to them by Michael DeLuca;
and
5. The fatal shooting of Michael DeLuca by Sergeant Graham and Officer Matlock was a justifiable homicide.