

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

JANUARY 29, 2015

REPORT ON THE JANUARY 5, 2013
SHOOTING OF THEODORE KEIPER
BY CALIFORNIA HIGHWAY PATROL OFFICERS
FRANK PARAMO AND MICHAEL TRENER



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I. INTRODUCTION

On January 5, 2013, at 2:15 p.m., California Highway Patrol (CHP) Officer Frank Paramo was on patrol in Ventura County with CHP Cadet Ronald Hensic. While traveling southbound on Old Pacific Coast Highway in the Solimar Beach area, Officer Paramo attempted to stop a motorcyclist, later identified as Theodore Keiper, who was traveling 92 miles per hour in a 45 mile per hour zone. Keiper failed to yield and continued at a high rate of speed, heading up Padre Juan Canyon Road and swerving through a construction zone and onto a privately-maintained oilfield access road running north/south, above Highway 101. The officers temporarily lost sight of Keiper, but almost immediately discovered that he had run off the road, coming to rest in heavy brush, approximately 35 feet down a ravine.

Officer Paramo was not sure if the suspect was waiting to ambush them. Following protocol,¹ Officer Paramo and Cadet Hensic approached with firearms drawn and observed Keiper down the embankment, still wearing his helmet, standing by the damaged motorcycle. Keiper had blood on his hands, but did not otherwise appear to be seriously injured. Due to the nature of the crash, emergency personnel were contacted and paramedics were dispatched to the scene.

Within moments, CHP Officer Michael Trenery arrived on scene. Officer Trenery and Cadet Hensic then descended the embankment to evaluate Keiper, render aid, and handcuff him so that he could be treated by paramedics.² California Fish and Wildlife Warden Jason Kraus also arrived on scene and joined Officer Paramo, covering Keiper with his firearm.

¹ After a high speed pursuit, it is standard protocol for officers to use “felony stop” procedures for officer safety reasons. These procedures include, but are not limited to, officers drawing their weapons and ordering a suspect to the ground for detention.

² After a pursuit, it is standard practice to restrain a suspect before paramedics will treat the subject.

As Officer Trenery and Cadet Hensic descended the embankment, Keiper refused to keep his hands in the air and refused to get on the ground as instructed. Keiper initially was not compliant with instructions to remove his helmet, but eventually did so. When Officer Trenery was within 10 feet of Keiper, Keiper turned away from Officer Trenery. As he turned back towards the officer, he stated, “Fuck you, I’m going to shoot you!” Keiper then reached across his body placing his right hand into his vest, near the waistband area, and again stated, “I’m going to kill you motherfucker.”³

From the top of the canyon, Officer Paramo fired five shots from his service weapon striking Keiper three times in the upper chest and neck area.⁴ Officer Trenery fired one shot, striking Keiper in the abdomen. CHP Officer Eugene Bermudez responded within moments of the shooting and assisted in securing Keiper at the scene. Keiper was subsequently handcuffed and Officer Trenery and Officer Bermudez attempted to render medical aid. Paramedics pronounced Keiper dead at the scene at 2:42 p.m. At the time of Keiper’s death, his blood alcohol level was .09 percent. The subsequent autopsy also revealed marijuana in his system. Officers located marijuana in his pocket. A replica gun was located in the debris field approximately five feet from where Keiper fell.

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 and District Attorney Investigator Kimberly Michael responded to the shooting scene and consulted with investigating officers.

The Ventura County Sheriff’s Office conducted an investigation into the shooting, which included interviewing witnesses, collecting physical evidence, and photographing the area of the shooting. On the afternoon of the incident, each officer provided a voluntary

³ Various descriptions were given of Keiper’s statements, including “I’m going to shoot you motherfucker” and “I’m going to kill you motherfucker.” In the brush near the motorcycle, officers recovered a toy pistol.

⁴ The distance from Officer Paramo to Keiper was approximately 45 feet.

statement describing the shooting in detail and participated in “walk throughs” of the scene with detectives.

The CHP Multidisciplinary Accident Investigation Team (MAIT) is commonly tasked to go to the scene of a collision where someone has died. MAIT responded to the scene of this incident and conducted an extensive investigation into the physical evidence at the scene, including mapping out dimensions and identifying the location of the physical evidence. They provided their report to the Sheriff’s Office.

The investigative reports of the Ventura County Sheriff and CHP were then submitted to the District Attorney’s Office for a determination as to whether the shooting of Theodore Keiper 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 more than 540 pages of reports and documents submitted by the Ventura County Sheriff’s Office and CHP which included interviews of police and civilian witnesses, diagrams, photographs, numerous recorded interviews, and recordings of radio transmissions. Senior Deputy District Attorney Linda S. Groberg prepared this report.

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 Theodore Keiper by CHP Officers Frank Paramo and Michael Trenery was justified and was not a criminal act.

II. STATEMENT OF FACTS

A. THEODORE KEIPER’S CRIMINAL AND SOCIAL HISTORY

Theodore “Ted” Keiper was born December 27, 1954, and was a lifelong resident of Casitas Springs, California. His California driver’s license was suspended, and had been

suspended three times in 2012 for refusing a chemical test, failing to appear, and driving under the influence of alcohol. At the time of the shooting, Keiper was still on probation with terms including “obey all laws” and “do not operate a motor vehicle with any intoxicant in your body.”⁵

Keiper’s criminal history includes arrests for petty theft, burglary, felony hit and run, possession of marijuana for sale, inflicting corporal injury to spouse/cohabitant, terrorist threats, witness intimidation, and brandishing a firearm.⁶ He was convicted of driving under the influence of alcohol three times between 1996 and 2012, including enhancements for inflicting injury and hit and run.

According to close friends of Keiper, he was experiencing financial difficulties, including the possible foreclosure of his home, and had been despondent. Keiper had talked to his girlfriend, Michelle Kirby, about “just going off a cliff on his bike” and had made statements to a longtime friend, Theresa Chism, suggesting that he was suicidal. According to Chism, Keiper stated that he “was afraid he wouldn’t shoot himself right or something, and he was going to let a cop pull the trigger.”⁷

B. THE PURSUIT

On January 5, 2013, at 2:19 p.m.,⁸ 16-year veteran CHP Officer Frank Paramo was showing Cadet Ronald Hensic different CHP beats in Ventura County, including the area of Old Pacific Coast Highway near Solimar Beach.⁹

⁵ Probation terms imposed July 5, 2012, in Ventura County Superior Court case number 2011042869 following conviction for Vehicle Code section 23152(a), driving under the influence of alcohol and admitting a special allegation pursuant to Vehicle Code section 23578 of having a blood alcohol level greater than .15.

⁶ See footnote 24, at page 19, *infra*.

⁷ Commonly referred to as “suicide by cop.” See statement of Theresa Chism at page 19, *infra*.

⁸ Dates and times are taken from CHP and VSO dispatch records. The reports noted a discrepancy of five minutes between times on the CHP voice print audio and the VisiCAD system. The times used are reflected by VisiCAD, with voice print running approximately five minutes ahead.

⁹ Cadet Hensic was enrolled in the police academy and assigned to the Ventura CHP office upon graduation. The ride-along was a mandatory portion of his training.

As they were heading back to the station, Officer Paramo noticed a motorcyclist approaching from the south at a high rate of speed. Using radar, Officer Paramo determined the speed was to be 92 miles per hour in a 45 mile-per-hour zone.

At 2:19 p.m., Officer Paramo notified dispatch that he was in pursuit of the speeding motorcycle utilizing lights and siren. Local video surveillance later obtained from a residence in the area shows the motorcycle traveling at a high rate of speed, followed a short distance later by the patrol car. Numerous bicyclists and pedestrians were also captured in the surveillance video as the area of Solimar Beach is well traveled, especially on weekends. Although lights and sirens were activated, Keiper failed to yield.¹⁰

He continued at a high rate of speed to Hobson Road. As he crossed the railroad tracks onto Hobson Road, Keiper nearly lost control of the motorcycle. He continued at a high rate of speed to Padre Juan Canyon Road where he passed through an active construction zone, then headed northbound up the canyon.

As the patrol car followed Keiper up Padre Juan Canyon Road, Keiper was no longer in sight. Shortly after losing sight of him, officers observed a dust cloud behind them, consistent with an off-road collision. Officer Paramo turned around and stopped at the side of the road. As he exited the car, Officer Paramo instructed Cadet Hensic to remove the shotgun from the patrol vehicle and cover him with it.¹¹

¹⁰ Although the CHP vehicle was equipped with a video camera recording system, Officer Paramo noted that it was not working properly that day and he deactivated it prior to contact with Keiper. Officer Treney also noted that his unit MVRs (camera system) was not working properly on the day in question.

¹¹ Officer Paramo was not sure what to expect, or whether Keiper was waiting in the brush to ambush them. It is standard practice to implement felony stop procedures following a pursuit.

C. CONTACT WITH THEODORE KEIPER

At 2:20 p.m., Officer Paramo advised dispatch that the subject “drove off the cliff” at Padre Juan Canyon Road north of 101 and was 20 feet down the embankment. He requested an ambulance “Code 3.”¹²

As Officer Paramo and Cadet Hensic stood at the top of the ravine, they observed Keiper in the heavy brush standing next to his damaged motorcycle. Officer Paramo ordered Keiper to stop moving around and to show them his hands; but Keiper was slow in following orders. When asked why he did not yield, Keiper commented, “I was fucking stupid.”

At 2:22 p.m., while waiting for backup and emergency medical response, Officer Paramo transmitted that Keiper appeared to have minor injuries and he was “complying with orders.”

At 2:26 p.m., Officer Paramo reported that the subject vehicle was 50 feet over the embankment, and that although the suspect was not yet in custody, they could discontinue broadcasting the emergency tone.¹³

At 2:28 p.m., 11-year veteran Officer Trenery arrived on scene and drew his firearm. Cadet Hensic was relieved of the shotgun. Officers Trenery and Paramo continued to cover Keiper and ordered him to stand still. Keiper continued to move about, until he eventually stood still for an extended time.

At this point, Officer Trenery climbed down the hill to handcuff Keiper. Cadet Hensic was directed to assist Officer Trenery, and unarmed, he descended the hill behind Officer Trenery.

¹² Code 3 refers to an emergency response “with lights and siren.”

¹³ During an emergency response, in order to minimize non-emergency radio traffic, dispatch will broadcast a continuous emergency tone, notifying other officers that there is an emergency in progress.

A series of radio transmissions between 2:15 p.m. and 2:24 p.m. involve coordinating emergency response and confirming the location for fire and paramedics.

D. THE SHOOTING

At 2:29 p.m., California Department of Fish and Wildlife Warden Jason Kraus¹⁴ reported that he was at the scene and was assisting the other three officers by covering the suspect with his rifle from the top of the embankment.

As Officer Trenery and Cadet Hensic descended into the ravine to contact Keiper, it appeared that he could hear and understand their commands, but either could not or would not comply. Keiper was breathing very hard and “huffing and puffing” which Officer Trenery indicated was consistent with the behavior of “dusters” or PCP users he had seen on prior assignments in south Los Angeles. Officer Trenery was surprised that someone who had been in a crash like Keiper would be up and moving around and not asking for help. The first thing that came to Officer Trenery’s mind was the possibility that Keiper was on angel dust, which would result in pain not affecting him.

Officer Trenery directed Keiper to get on the ground and take off his helmet. Keiper repeatedly shook his head side to side and refused to comply with the command.¹⁵

After a short period of time, Keiper finally removed his helmet and laid it on the ground; however, he remained standing.¹⁶ Keiper turned away from Officer Trenery briefly, then turned back toward him and said, “Fuck you! I’m going to shoot you.” Keiper then reached into the left side of his waistband (under his open vest) with his right hand, saying again, “I’m going to kill you, motherfucker!”¹⁷ Officer Trenery yelled, “Stop! Don’t do it!” As Keiper began to draw his hand out of the waistband, both Officer

¹⁴ On January 1, 2013, the California Department of Fish and Game was renamed the California Department of Fish and Wildlife.

¹⁵ Officer Trenery described Keiper’s movements as waving or shaking his head as if saying no.

¹⁶ Officer Trenery estimated that he gave Keiper commands to remove his helmet and get onto the ground at least 15 times.

¹⁷ Cadet Hensic stated he heard Keiper say “I’m going to shoot you motherfucker.”

Paramo and Officer Trenerly fired their service weapons at Keiper, striking him four times in the torso. Officer Paramo fired five shots, striking Keiper three times, and Officer Trenerly fired one shot, striking Keiper in the abdomen.

At 2:30 p.m., Officer Paramo transmitted an emergency code “11-99: shots fired and suspect down.”

Keiper collapsed to the ground but was still breathing. Officer Bermudez arrived on scene at 2:33 p.m. and assisted Officer Trenerly as he secured Keiper’s wrists with handcuffs. Officer Paramo threw a first-aid bag down to Officer Trenerly. Both Officer Trenerly and Officer Bermudez attempted to provide medical assistance to Keiper while waiting for emergency personnel. At 2:35 p.m., Ventura City Fire Department personnel arrived on scene and began to examine and treat Keiper. At 2:42 p.m., Ventura City Fire Department Paramedic Chris Pironti pronounced death.¹⁸

E. ADDITIONAL POLICE RESPONSE AND INVESTIGATION

Other personnel from the CHP, Ventura County Sheriff’s Office, and California Department of Parks and Recreation responded to the scene. None of the additional responding parties witnessed the pursuit or the shooting. The CHP MAIT prepared an investigative report with an extensive summary and diagram of the physical evidence at the scene which was provided to the Ventura County Sheriff’s Office and included in the reports submitted to the District Attorney’s Office for review.

F. WITNESS STATEMENTS

Numerous individuals were interviewed, including officers, emergency medical personnel, construction workers, and friends of Keiper. Summaries of the pertinent witness statements are set forth below.

¹⁸ Pironti’s initial statement indicated the time of death as 2:25 p.m.; however, the time was later corrected, by memo, to reflect the time of 2:42 p.m.

1. CRAIG SMITH

On January 5, 2013,¹⁹ Craig Smith was operating a backhoe at a construction zone near the scene of the shooting. He was in the middle of the bridge with his backhoe. He heard the motorcycle and then sirens. He saw the motorcycle and the patrol car coming over the bridge and they “squeezed” by him and went up the canyon. After the motorcycle and patrol vehicle drove by, he continued up the canyon road to pick up some dirt for the worksite. When he came upon the scene, he saw two officers looking over the side of the roadway with their guns drawn. Smith turned around and headed back to the work site. After one of the officers told his co-workers that it was okay for them to use the road, he headed back up to get the dirt. This time, when he arrived at the scene, he discovered that the road was blocked. Shortly thereafter, he heard three to four gunshots and again immediately left the area.

2. GUSTIN BAKER

Gustin Baker was working in the construction zone and observed a motorcyclist traveling northbound on Padre Juan Canyon Road approaching the overpass. Baker estimated the speed of the motorcyclist between 40 and 50 miles per hour as it passed his location going over the bridge. Baker estimated that the patrol unit was about 200 yards behind the motorcyclist. The motorcycle continued northbound through the gate leading to the canyon, followed by the patrol vehicle. Baker heard a “kind of ruckus” after the motorcycle and the CHP vehicle passed over the Padre Juan Canyon overpass. He then heard the sound of car doors slamming shut and assumed that the motorcyclist had been caught.

As Baker and another worker, Mark Avila, drove up the canyon road to get some dirt for their project, they encountered two officers with guns drawn (one handgun and one shotgun). They did not see the motorcycle or rider; however, Baker could see the “track where it (motorcycle and rider) kind of offed into the canyon.” Avila asked the officers if they could continue up the canyon and they were told it was okay as long as they did not

¹⁹ Unless otherwise noted, the witness interviews took place on January 5, 2013.

block the road. As they headed back south to tell the construction crew that they could use the road, Baker heard several gunshots, and they retreated to the area of the overpass.

3. SAL ENRIQUEZ

Sal Enriquez was working with a welding crew a half-mile north of the gate/cattle guard on Padre Juan Canyon. When he drove south, he saw two police cars and two officers on the road. He observed one officer with a shotgun or rifle out and the other officer had his hand on his gun in the holster. The officers appeared to be talking as they looked into the ravine. He thought they might be looking for a mountain lion. Enriquez did not believe that the officers noticed him, even though he was only 25 to 30 feet from them. He saw one of the officers throw something over the side of the ravine and say, "Be careful." Enriquez was present three to four minutes but did not hear any gunshots. He later stated that he believed the incident was over when he arrived at the scene. When asked if he heard any shots fired, Enriquez explained that he had been working next to a generator and did not see or hear anything.

4. DAN HISER

Hiser was returning to the job site and heading up Padre Juan Canyon Road when he saw the motorcycle approaching him from behind at approximately 65 miles per hour. Hiser initially did not realize the motorcycle was being chased, so he did not try to get out of the way. Hiser was hoping to slow the motorcyclist down because of the workers ahead. The motorcyclist aggressively passed his vehicle, then locked his brakes and slid a little before turning right and going over the bridge. Hiser noticed the patrol vehicle behind him with lights and sirens. Hiser moved to the side of the road and the patrol vehicle passed and continued over the bridge. Shortly thereafter, Craig Smith notified him that the motorcycle had crashed.

5. KEVIN BROCK

Brock was working on an oil spill cleanup on Padre Juan Canyon Road. He was standing on the north side of the bridge when he first heard a motorcycle on the southern portion of the bridge. He saw the motorcycle traveling at a high rate of speed, which he

estimated at 45 to 50 miles per hour. The driver appeared to be trying to get away. As the motorcycle passed his location, he moved out of the way to avoid being hit. The motorcycle came within a few feet of where he was standing.

6. MARK AVILA

Avila was working on an oil spill cleanup on Padre Juan Canyon Road. As he was standing on the bridge that runs over US-101, he heard a loud motorcycle and saw the motorcycle heading toward him, followed by a patrol car in pursuit, with lights and siren. The motorcycle came “barreling” past their backhoe, and just missed “clipping it.” The rider came within 10 to 12 feet of him, making eye contact with him as he went around them. Avila stated that the motorcyclist was going as fast as he could, and got “a little squirrely.” Avila estimated the motorcycle speed at 40 miles per hour. After approximately five minutes, he sent his backhoe operator, Craig Smith, up the canyon to retrieve more dirt. Smith could not pass because there were officers in the roadway with their guns drawn. He and Gus Baker drove up to the scene, just before the cattle crossing to see if they could continue to retrieve dirt. One of the officers told him not to block the roadway because other units were responding.

7. OFFICER FRANK PARAMO

Sheriff’s Detectives David Brantley and Greg Tougas conducted a walk-through of the scene with Officer Paramo at 5:30 p.m. on January 5, 2013. Officer Paramo was interviewed in detail at the station at about 10:00 p.m. that evening by Detective David Brantley.

Officer Paramo related that he had been traveling south on SR 1 (Old Pacific Coast Highway) at Solimar Beach. CHP Cadet Ronald Hensic was in the car with him. Officer Paramo saw the motorcycle approaching and used radar to establish that the motorcycle was traveling 92 miles per hour. Officer Paramo turned his vehicle around to pursue the motorcycle as it reached speeds of over 100 miles per hour. Officer Paramo continued to follow the vehicle as it exited onto Padre Juan Canyon Road and crossed over the cattle guard.

Shortly after exiting onto Padre Juan Canyon Road, Officer Paramo lost sight of the motorcycle. He continued approximately two-tenths of a mile north, searching for it before he came to a stop. He thought the driver may have driven off the ravine, or ditched the motorcycle when he noticed a dust cloud behind the area where he stopped his car. Officer Paramo estimated that they had been traveling at 60 to 65 miles per hour as they crossed over the cattle guard and estimated the length of the pursuit to be two to three minutes.²⁰

Based upon his experience in 30 to 40 high-speed pursuits, Officer Paramo “got the sense” that the suspect was going to risk his life to get away from the officer, and believed that the suspect had several “near TCs”²¹ before the motorcyclist went over the side of the road.

As he exited his vehicle, Officer Paramo noticed the suspect down in the ravine and concluded that he had crashed over the side of the roadway. Officer Paramo did not know what the suspect’s condition was or if he was lying in wait in the brush to ambush them. There was a crevice in the dirt roadway where Officer Paramo stood when he first observed the suspect 20 to 25 feet down the ravine. Officer Paramo saw him get up from the ground and noted that he had injuries to both hands and was bleeding. He advised dispatch of the circumstances and requested an ambulance.

While waiting for backup, Officer Paramo ordered the suspect to show his hands. He asked the suspect why he ran and the suspect responded, “Yeah, I was fucking stupid.” Officer Paramo held the suspect at gunpoint until Officer Trenery arrived.

Officer Paramo knew that the suspect would have to be handcuffed before medical personnel would render assistance to him. When asked about Keiper’s demeanor, Officer Paramo stated that as he observed the suspect, he appeared to be dazed and injured. He

²⁰ The units were equipped with cameras; however, earlier in the shift, the system was ejecting the disk so Officer Paramo deactivated it.

²¹ “TC” is an abbreviation for traffic collision.

got a “funny feeling” about the suspect, as though something was just not normal, so he decided to wait for back-up before attempting to assist him.

Officer Trenery arrived on scene and told Officer Paramo to cover him as he walked down the ravine toward the suspect. The suspect was standing at this point. Both Officer Paramo and Officer Trenery continued telling the suspect to take his helmet off as Officer Trenery continued to approach. After several commands, when Officer Trenery was about five feet from the suspect, he finally removed his helmet. As Officer Trenery continued to approach him, the suspect turned away. Officer Paramo thought to himself, “What is this guy doing?” Instead of running, the suspect quickly turned back toward Officer Trenery, opened the vest of his jacket with his left hand, and reached across his waist with his right hand.

Officer Paramo said that he had a direct view of the suspect as he turned away, and then turned back towards Officer Trenery. At that time the suspect stated, “Fuck you, I’m going to shoot you.” Officer Paramo said the suspect then reached into his jacket and stated, “I’m going to shoot you motherfucker.” Officer Paramo demonstrated how the suspect reached across his body with one arm and slightly turned his body away from where Officer Trenery was standing and then began turning back towards Officer Trenery while beginning to remove the arm he had reached into his vest.

Officer Paramo stated that at this point he was in fear for the safety of Officer Trenery and Cadet Hensic, as well as himself. He believed that Officer Trenery’s life was in danger and he fired several shots at the suspect. Officer Paramo estimated that he fired three to four rounds. He observed Officer Trenery fire one round.

Officer Paramo confirmed that he never actually saw a weapon, but he thought the suspect was reaching for a weapon, believed that the suspect intended to “do harm” and believed that the suspect was going to shoot and kill his partner.

Officer Paramo stated that Officer Trenerly fired one time at the suspect. Officer Trenerly handcuffed the suspect and Officer Paramo retrieved a first aid bag from the unit and tossed the bag down to Officer Trenerly. Officer Paramo noticed that a Fish and Game warden was on site; however, he did not know whether the warden witnessed the shooting.

8. OFFICER MICHAEL TRENERLY

Sheriff's Detective William Therrien conducted a walk through interview of the scene with Officer Trenerly on January 5, 2013, at 5:30 p.m. Officer Trenerly was also interviewed in detail at the station by Detective Therrien at 10:00 p.m. that same day.

Officer Trenerly was on patrol and heard the pursuit over the radio. As he traveled to the scene, he heard a broadcast that the vehicle being pursued had gone over the cliff.

Officer Trenerly was familiar with the area and had been on a call there before. As he drove past some construction workers, they pointed, signaling where the pursuit went. As he crossed the bridge into Padre Juan Canyon, he saw Officer Paramo's patrol vehicle.

At the scene, he saw Officer Paramo and the cadet standing outside the police vehicle. Officer Paramo had his handgun and Cadet Hensic had a shotgun pointing down the embankment. Officer Trenerly indicated that he initially thought that the collision would have been fatal, with a vehicle over the cliff; however, when he saw Officer Paramo armed, he felt that the subject must be alive and not cooperating. Officer Trenerly pulled out his firearm for a felony stop.²² He saw the suspect standing with his helmet on. It was obvious that he had been in a serious traffic collision. He asked the suspect if he was okay, and asked him to take his helmet and jacket off. Officer Trenerly noted that the suspect was breathing very heavily. The first thing that went through his mind was whether the suspect was a "duster" (on PCP or "angel dust") as people on angel dust can

²² As Officer Trenerly descended the ravine, at one point he re-holstered his firearm until he was on level ground.

be combative and can fight through the pain. The suspect was moving side to side and did not appear to be seriously injured.

Officer Trenery noticed the Fish and Game warden standing next to Officer Paramo. He knew that the paramedics would not work on the subject unless he was in custody. Officer Trenery told Officer Paramo they needed to place the male subject in custody before the paramedics could work on him.

As Officer Trenery walked down the embankment, the suspect was staring at him and huffing and puffing. He told the suspect to get on the ground. When Officer Trenery was five to ten feet from the suspect, he tried to talk to him and told him to take off his helmet. Officer Trenery stated that the suspect was shaking his head back and forth, as if saying no. Officer Trenery was planning on engaging the subject but held off because he was not obeying his commands to get on the ground. Officer Trenery believes that he gave the suspect commands to get on the ground and take off his helmet at least 15 times. The suspect was crossing his hands, engaging them, crossing them, adjusting his waist, and appeared as if he could not keep still. Officer Trenery believed that the suspect would fight him if he touched him, and he was unsure whether he could calm the subject down enough to contact him.

The suspect started to turn, then turned back and reached across his body and into his vest toward the waistband of his pants. The suspect stated, "I'm going to kill you motherfucker." Officer Trenery thought the suspect was going to shoot him. As the suspect's elbow started coming up, Trenery was terrified that he would be killed and he fired his service weapon at him one time. Officer Trenery did not remember if he or Officer Paramo shot first, but he heard two rounds go off besides his. The suspect fell to the ground, and Officer Trenery noticed Cadet Hensic and Officer Bermudez coming down the hill. Officer Trenery asked for Officer Bermudez's handcuffs. The suspect was still breathing as if he were hyperventilating. Officer Paramo threw a medical bag down

to Officer Trenery. He placed gauze on the suspect's wounds. When the fire department personnel arrived, they took over rendering medical treatment.

9. CADET RONALD HENSIC

Cadet Ronald Hensic was interviewed at the scene by Ventura County Sheriff's Senior Deputy Jose Lopez at 6:10 p.m. on January 5, 2013, and in more detail at 9:20 p.m. that evening.

Cadet Hensic related that he was riding as a passenger in the patrol unit with Officer Paramo when the pursuit was initiated. They were on their way back to the office when they noticed the motorcycle approaching in the opposite direction at a high rate of speed. The motorcyclist failed to yield and continued toward the canyon. Cadet Hensic stated the motorcyclist had "absolutely no care for anybody out and around." He was driving with a "reckless abandon," "flying through," at a high rate of speed, "without regard for anyone's safety." Upon entering the canyon, they lost sight of the motorcycle. Cadet Hensic noticed a cloud of dust off to the shoulder. Cadet Hensic and Officer Paramo discussed that the subject might have gone over the side. Officer Paramo turned the car around and they pulled over in the area where the dust cloud was seen.

Officer Paramo directed Cadet Hensic to deploy and carry the unit shotgun to cover Officer Paramo as he attempted to make contact with the suspect. Officer Paramo and Cadet Hensic walked to the edge of the roadway and saw the suspect stand up by the motorcycle at the bottom of the ravine. Officer Paramo was giving commands to the suspect; however, he appeared stunned and disoriented. The suspect looked back and forth from Officer Paramo to Cadet Hensic. Officer Paramo continued giving the suspect commands. The secondary CHP officer arrived and took responsibility for covering Officer Paramo. Cadet Hensic relinquished the shotgun after Officer Trenery was on scene.

The suspect continued to move about and would not stand still as directed. At one point, Officer Paramo asked the suspect why he ran and why he did not stop. Initially the suspect did not respond, and then Cadet Hensic heard him say, "It was stupid."

Officer Trenery directed Cadet Hensic to assist in approaching the suspect. Cadet Hensic felt that the suspect did not appear to have "his wits about him" and described the look on his face as being "intimidated and scared." The suspect alternated between complying with orders to stand still and failing to comply with orders. When he finally complied and stopped moving around, Officer Trenery and Cadet Hensic descended the ravine. As they descended, Officer Trenery re-holstered his firearm.

When they got to the bottom, the suspect looked directly at Officer Paramo and Cadet Hensic and said, "I'm going to shoot you motherfucker!" The suspect reached into his vest with one hand as he said, "I'm going to shoot you motherfucker!"²³ Both Officer Paramo and Officer Trenery yelled at the suspect, "Don't move!" and "Don't do it!" The suspect repeated, "I'm going to shoot you motherfucker!" as he reached into his vest. Cadet Hensic described the look on the suspect's face as being "deranged" and "crazed." Cadet Hensic was terrified at this point and then heard shots fired. Cadet Hensic believed without a doubt that the suspect was about to pull a weapon and shoot both him and Officer Trenery. Cadet Hensic stated that he instinctively reached for his right hip for a gun and froze when he realized he did not have a firearm. (He was accustomed to carrying a firearm in the academy.) He knew that if he moved, he might place himself in the line of fire. He indicated that Officer Trenery re-drew his weapon after the suspect started to reach into his vest.

Cadet Hensic heard and saw Officer Trenery fire one shot toward the suspect, and heard three shots fired from the top of the ravine from an unknown person. Cadet Hensic estimated that he was standing approximately five feet from the suspect and

²³ At another point in the interview Cadet Hensic stated that Keiper said, "I'm going to kill you, I'm going to shoot you motherfucker."

approximately two to three feet to the right and rear of Officer Trenery at the time of the shooting. Cadet Hensic remembered watching the suspect and the suspect had a completely “believable rage, crazy look in his eyes, that I’m going to kill these two guys right now.”

Immediately after the shooting, another CHP officer arrived and walked down the ravine to assist Officer Trenery handcuff the subject. Cadet Hensic noticed the Fish and Game warden on scene, but does not know at what point he arrived.

10. FISH AND WILDLIFE WARDEN JASON KRAUS

Department of Fish and Wildlife Warden Jason Kraus was interviewed at the scene by Senior Deputy Jose Lopez at 4:10 p.m. on January 5, 2013.

Warden Kraus indicated that he was on duty driving northbound on Pacific Coast Highway when he saw a CHP unit in pursuit of a motorcyclist on Padre Juan Canyon Road. He decided to assist and notified dispatch that he was assisting CHP in a pursuit.

Warden Kraus stated that as he drove to the Highway 101 overpass, he saw several construction workers who told him that the CHP was following a “Harley.” The workers pointed to the direction the CHP unit was traveling and Warden Kraus proceeded to the area.

When he got to the scene, he saw two CHP officers and a cadet. One was holding a shotgun and the other a handgun. Warden Kraus removed his long rifle from his vehicle and walked to the edge of the road where they were standing. He saw the suspect down in the ravine still wearing a helmet.²⁴ Warden Kraus and the CHP officers were giving commands to the subject while identifying themselves. The officers were not yelling, but giving him general commands. The officers were saying things like, “Hey, just stay where you are,” “Let me see your hands,” and “We’re going to come down, and we’re

²⁴ Warden Kraus believed that the subject was wearing his helmet at the time of the shooting.

going to deal with you, don't do anything stupid, stay where you are.” Warden Kraus observed one officer and the cadet go down into the ravine to secure the suspect. Warden Kraus remained at the top of the ravine with the other CHP officer.

As Warden Kraus repositioned himself to have a better line of fire, he heard the officer in the ravine begin to yell at the suspect but he could not see what was going on due to his positioning. He had moved his weapon to the low-ready position, with his firearm pointed down and toward the ground, indicating he did not believe that there was an imminent threat as the officers descended the ravine. Warden Kraus heard the officers telling the suspect to remain calm and not to do anything stupid. The officers also told the suspect to show his hands. Warden Kraus heard one of the officers yell, “Let me see your hands!” “Don't do it!” It was apparent to Warden Kraus that the suspect was doing something wrong. Warden Kraus did not have a clear view of what the suspect in the ravine was doing.

At this point, Warden Kraus heard two or three shots from the CHP officer who was standing to his left. He then heard a single shot fired from the CHP officer in the ravine. The suspect fell to the ground and was thereafter handcuffed. Officer Eugene Bermudez arrived on scene and went down the ravine to assist.

11. OFFICER EUGENE BERMUDEZ

California Highway Patrol Officer Bermudez was on patrol on January 5, 2013, at 2:19 p.m., when he heard the dispatch regarding the pursuit of the motorcycle. While en route, he heard Officer Paramo transmit that the suspect's vehicle had driven over a cliff and the suspect suffered minor injuries. At approximately 2:31 p.m., Officer Bermudez heard the “officer needs assistance, multiple shots fired” call.

Officer Bermudez arrived on scene at approximately 2:37 p.m. and observed the suspect lying on his back 20 to 30 feet down the dirt/brush embankment. Officer Paramo was standing up on the road alongside a California Department of Fish and Wildlife warden. Officer Trener was standing approximately halfway down the embankment with Officer

Paramo's cadet standing above/behind him. Officer Bermudez immediately jumped down the embankment alongside Officer Trenery and covered Officer Trenery as he handcuffed the suspect. Officer Bermudez and Officer Trenery applied first aid to the suspect's wounds. The fire department arrived shortly after, and the suspect was pronounced dead at the scene.

12. VENTURA CITY FIRE DEPARTMENT PARAMEDIC
CHRIS PIRONTI

Ventura City Fire Department Paramedic Chris Pironti was on duty and dispatched to the scene for a "motorcycle down." He received direction from CHP to enter off Padre Juan Canyon Road. On the way to the call, they were advised that there were shots fired and they needed to stage.²⁵ As they got to the scene, they were notified that they no longer needed to stage.

He was informed by Ventura City Fire Department Captain Eric Mukes that there was a possible cardiac arrest patient. Paramedic Pironti grabbed his "over the side" bag and went down to assess the patient. The patient had no pulse, was not breathing, his pupils were fixed and dilated. Pironti pronounced death at 2:42 p.m.²⁶

13. MICHELLE KIRBY

Michelle Kirby was interviewed on January 5, 2013, and also on January 9, 2013. Kirby related that she and Keiper had been involved in a romantic relationship for three years and she lived with Keiper at his residence in Casitas Springs. Earlier in the day on January 5, 2013, she met Keiper at Grant Park in Ventura. Keiper had smoked marijuana earlier and had a beer while at the park. Kirby was upset with Keiper because he was not supposed to be drinking. Kirby noted that Keiper "had his moments, but he was a wonderful man," and they were having a good day. He told her how much he loved her

²⁵ It is common practice for emergency personnel to "stage" or wait to enter the scene until the scene or suspect is secure and they are cleared to enter by officers on the scene.

²⁶ When initially interviewed, Pironti stated that he pronounced the time of death at 14:25, or 2:25 p.m. The time was later corrected to 2:42 p.m.

that day. She stated that she was supposed to meet Keiper at 2:45 p.m. at the beach but he did not show up as planned.

When Kirby was initially contacted on January 5, she was asked whether there was anything unusual about Keiper that day, or if he was upset. Kirby stated, “He’s been depressed. He’s been very... Please tell me he didn’t kill himself. I saw the ambulance and sheriff up there, up on the bridge.”

Kirby reported that Keiper was a heavy drinker who could be “unpredictable” when he drank. She noted that his diabetes was “out of control.” Kirby related that Keiper had been depressed lately and that he had recently “lost everything.” Kirby said Keiper had talked about “just going off a cliff on his bike.” She explained that he was about to lose his house to foreclosure, had not been speaking to his son, and was not able to reach his daughter. Kirby also noted that Keiper had guns in the past. She believed that his firearms had been surrendered after an incident in which he had pointed a gun at her; however, Keiper had stated that he had a gun.²⁷

Kirby stated that Keiper did not keep diaries but had asked her to start recording his life story. She said they had talked about it briefly on the day of the incident.

Kirby noted that Keiper was very familiar with the area of Padre Juan Canyon Road and that they had ridden his motorcycle up the canyon a number of times.

14. SHANE KEIPER

Shane Keiper, Theodore Keiper’s son (referred to hereinafter as Shane), was interviewed on January 9, 2013. Shane described his relationship with his dad as “good” and they got along okay. He last saw his father a month prior when his father visited him at his home in northern California. Shane knew that things were “hard” for his dad: he “didn’t feel like himself,” his blood pressure was elevated, and he was not doing well with his

²⁷ Michelle Kirby reported that on February 11, 2012, Keiper punched and kicked her, and threatened to kill her with a semi-automatic pistol.

diabetes. When Shane spoke to his father in December 2012, his dad sounded “fine,” although Shane stated that his dad “wanted help” and wanted Shane to move back home. Shane believed that his father was stressed about losing his house, but he did not think that his dad would “go on a crazy binge and end it.” His dad would say that a person has to get up every day and “do the best you can.” Prior to his dad’s death, he had not spoken to his father in a few weeks. Shane stated that his dad battled with drinking alcohol.

Without provocation, during the interview Shane stated: “I don’t know. I know the big thought is . . . is maybe . . . I could see . . . I’m trying to think what could cause it. And I know there is . . . it could probably go away with him going ‘Fuck it, I’m tired of life. I’ve got someone pursuing me I’m just going to evade ‘em.’ And the opportunity arose and that was it.” When asked if he could see his dad “doing it,” he said he did not know, but he could see it happening in the scenario he just described.

15. THERESA CHISM

Following the shooting, Theresa Chism sent an e-mail to the local news station, ABC KEYT 3, regarding the Keiper shooting. In the e-mail, she stated that she was a personal friend of Keiper, and had known him for 30 years. She related that within weeks of the shooting he was suicidal. She stated, “He was thinking about killing himself but was too chicken, then said he could just get the cops to do it for him and he laughed.” She related a number of personal difficulties and issues he was facing with family and friends. She believed that he had been drinking a lot and “was not in his right frame of mind.” She wanted the officers involved to “know this is what Ted wanted,” and she was sorry that the officers were the ones who had to pull the trigger.

Chism was also interviewed by investigators from the Ventura County Sheriff’s Office on January 8, 2013. Chism stated that Keiper had been by her house three weeks prior and had been really depressed. He related some personal difficulties he was going through and stated that he was having “a lot of trouble lately and just couldn’t handle it.” Chism said, “He’d do it (kill himself) but was afraid he wouldn’t shoot himself right or

something, and he was going to let the cop pull the trigger.” Chism related, “He had this planned out, I’m sure.”

When asked if Keiper previously expressed suicidal thoughts, Chism stated, “Not suicidal, homicidal...but not suicidal.” Chism explained that Keiper had talked about people he wanted to kill. She stated, “You know he never did kill anybody, but a lot of talk.” She stated he talked about people who had cheated or stolen from him or caused him problems. Chism mentioned that Keiper recently had relationship and financial problems.

III. PHYSICAL EVIDENCE

A. CRIME SCENE

1. PADRE JUAN CANYON ROAD

The crime scene on Padre Juan Canyon Road was located approximately 300 yards north of the US 101 overpass on Padre Juan Canyon Road. At that location, Padre Juan Canyon Road is a privately owned oilfield access road that runs north and south. The road is asphalt and ranges from 19 to 29 feet wide, with dirt shoulders on both sides of the unmarked roadway. There is a rolling chain-link fence and metal gate 160 yards from the crime scene. The gate was open, and there was a metal cattle guard across the roadway at the gate.

The CHP MAIT conducted a detailed investigation and diagrammed the scene and physical evidence. Detailed measurements were taken of all of the physical evidence, using a Trimble Total Station Survey System (TSSS) to establish a Cartesian coordinate system to document the scene characteristics, locations of physical evidence and location of associated vehicles. The motorcycle and Keiper were located approximately 35 feet down the ravine.

The evidence is undisputed that Keiper ran off the road prior to actual contact with the officers. Therefore, the specific details of the location of all of the physical skid marks, gouges, and scrapes are not separately detailed in this report, as the collision was not a direct factor in the shooting. A general overview of the physical evidence regarding the collision is set forth herein.

The following aerial photograph and photograph from the entrance at the gate depict the scene.

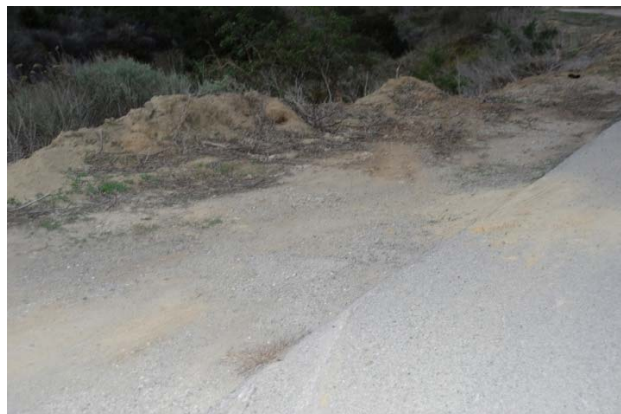


2. GOUGE MARKS, TIRE SCUFFS, AND DEBRIS FIELD

Physical evidence evaluated at the scene indicated that the motorcycle left the roadway shortly after crossing the cattle guard. Scuffs and gouges ranging in length from 3.7 feet to 5.0 feet were apparent on the asphalt concrete pavement and dirt shoulder area of Padre Juan Canyon Road. The debris field was 49 feet long, with a maximum width of 7.3 feet.



A number of gouge marks, tire scuffs, and furrows in the roadway and west side of the dirt shoulder extended north to northeast from the area of the gate/cattle guard toward the ravine, and ultimately ended at the location of Keiper's motorcycle at the bottom of the ravine. At the edge of the ravine, a small debris field contained several broken motorcycle parts. The physical evidence indicated that Keiper lost control of the motorcycle at or near the metal cattle guard, laying the motorcycle on its side on the asphalt roadway before leaving the roadway and crashing into the ravine below.



3. EXPENDED CARTRIDGES

A total of six expended Smith and Wesson .40 cartridge casings were recovered from the scene.²⁸ Five were located near the top of the slope where Officer Paramo stood, and another was recovered in the ravine near the area where Officer Trenery stood. The expended cartridges matched the total number of rounds missing from the officers' duty firearms after the shooting. The evidence indicates that Officer Paramo fired five shots, with three striking Keiper. Officer Trenery fired one shot, striking Keiper in the abdomen. According to witness statements, it is believed that Officer Paramo fired first and Officer Trenery fired at about the same time as the other shots fired by Officer Paramo.

4. REPLICIA GUN

In the dense vegetation near the location of the motorcycle, officers found a plastic replica gun, with a white grip and orange tipped barrel. No fingerprint or DNA evidence sufficient for analysis could be obtained; however, investigators believed that the location of the replica firearm, proximity to the debris field from the crash, and lack of other debris, suggested that the toy gun may have been in Keiper's possession at the time he crashed. Neither officer observed the toy gun prior to the shooting.



²⁸ The scene was searched on the day and evening of the incident; however, darkness prevented a complete canvassing of the scene, that night, and inclement weather prevented further examination until Wednesday, January 9, 2013. At that time, additional bullet casings were located, for a total of six casings recovered.

5. SURVEILLANCE VIDEO

Surveillance video footage was obtained from a resident in the Rincon area. The security system time stamp shows a motorcycle at 2:16:27 traveling northbound on Old Pacific Coast Highway at a high rate of speed past the residence. Approximately eight seconds later, the CHP vehicle follows.

B. TOXICOLOGY REPORT

Keiper's blood was analyzed and determined to contain .09 percent blood alcohol by weight. A sample of his urine contained .13 percent blood alcohol by weight. Keiper's blood also contained Delta 9-Carboxy THC, a metabolite of marijuana,²⁹ consistent with Michelle Kirby's statement that Keiper had smoked marijuana earlier in the day.

C. AUTOPSY

Theodore Keiper was pronounced dead at the scene at 2:42 p.m. on January 5, 2013. An autopsy was performed on January 6, 2013, by Dr. Ronald O'Halloran of the Ventura County Medical Examiner's Office. Keiper received four gunshot wounds to the abdomen, shoulders, and base of his neck. Three slugs and a partial jacket were recovered for forensic comparison.³⁰ Dr. O'Halloran concluded that Keiper died from multiple gunshot wounds and that the killing was a homicide, meaning a death at the hands of another.³¹

The four gunshot wounds are detailed below. Forensic analysis determined that one shot was fired from Officer Trenery's service weapon and three shots were fired from Officer Paramo's service weapon.

²⁹ Delta 9-Carboxy THC is a metabolite of marijuana that remains for a short period of time in the blood, indicating recent use of marijuana.

³⁰ Forensic Scientist James L. Roberts examined the firearms, ammunition magazines, expended cartridges and the bullets recovered during the autopsy. The bullet jacket recovered from Keiper's left arm, and bullets recovered from Keiper's left back and spine were fired from Officer Paramo's service weapon. The bullet recovered from Keiper's left hip-abdomen was fired from Officer Trenery's service weapon.

³¹ Dr. O'Halloran was unable to determine the order in which the bullets struck Keiper and the wounds were assigned numbers for identification purposes only.

- Number one entered Keiper's upper right abdomen.
- Number two entered Keiper's left upper chest.
- Number three entered Keiper's right shoulder.
- Number four entered Keiper's right neck area near the base of his shoulder.

All recovered bullets were .40 caliber slugs. There was no stippling or fouling on the skin around the wounds, indicating that the shots were not fired at close range.

The cause of death was determined to be multiple gunshot wounds. The coroner did not render an opinion as to which wounds in and of themselves would have been fatal.

Keiper had no injuries to his head, face, teeth and lips. There were no signs of a skull fracture and no scalp injuries.

Keiper had several non-gunshot injuries, including: an 18-inch by 5-inch vertical abrasion on the lower left abdomen, a 6-inch by 4-inch cluster of horizontal abrasions on the left elbow, abrasions on the left hand, right forearm and wrist, a contusion and slight swelling to the right hand, contusions to the right fingers, and abrasions to the right wrist. Keiper had a half-inch hole (puncture wound) on his right wrist with abrasion and a half-inch tearing on the inside. One inch from the smaller hole was a larger irregular hole measuring up to 1¼ inches in diameter. The two holes connected together in soft tissue and there was no damage to the underlying bone. Dr. O'Halloran reported that it could be a puncture from bamboo that was in the vicinity of the area where Keiper crashed his motorcycle. Keiper had another puncture wound on his left shoulder area.

Keiper also had a couple of small linear abrasions on the center of the back, and a cluster of linear and nonlinear intermittent abrasions on the anterior left thigh, extending onto the left knee, measuring in aggregate 7 inches by 3 inches. He had another cluster of irregular abrasions and associated small contusions on the anterior right lower thigh and knee, measuring in aggregate 3 inches by 1.5 inches. Keiper had additional abrasions and contusions that were not related to the gunshot wounds.

During the autopsy, Dr. O'Halloran found rolling papers and a clear plastic baggie containing what appeared to be marijuana in Keiper's pocket.

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." (Penal Code section 197(1).)

CALCRIM 550, the specific jury instruction related to self-defense states: 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.” (Penal Code section 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) 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. THEODORE KEIPER'S CRIMINAL CONDUCT

Theodore Keiper 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:

- Criminal threats in violation of Penal Code section 422.
- Resisting an executive officer with threats of force in violation of Penal Code section 69.
- Evading a peace officer in violation of Vehicle Code section 2800.1/2800.2.
- Reckless driving in violation of Vehicle Code section 23103.
- Speeding in violation of Vehicle Code section 22349.
- Driving under the influence of alcohol in violation of Vehicle Code section 23152(a).

V. ANALYSIS

Theodore Keiper was despondent, talked about committing suicide and had recently commented that he was “going to let a cop pull the trigger.” He had been smoking marijuana and drinking. He chose to drive his 1997 Harley-Davidson motorcycle at speeds in excess of 90 miles per hour in a 45 mile-per-hour zone and failed to yield when Officer Paramo tried to conduct an enforcement stop. Keiper maneuvered his motorcycle through construction workers nearly hitting men and equipment in reckless disregard for the safety of others as he continued up Padre Juan Canyon Road. It was later determined that Keiper was driving with a blood alcohol content of .09, had a metabolite of marijuana in his system, and marijuana in his possession.

Keiper lost control of his motorcycle shortly after crossing the cattle guard and entering the private section of Padre Juan Canyon Road. Keiper crashed his motorcycle and went off the road into a ravine 30 to 35 feet below. When ultimately contacted by law enforcement, Keiper initially refused to comply with directives from the officers and then appeared to be cooperative. When responding officers attempted to contact him in the ravine, he told Officer Trenery he was going to shoot him and he reached across his body

in a furtive movement consistent with someone reaching for a concealed weapon. An unarmed cadet was close behind Officer Trenery.

Officer Paramo observed Keiper's actions from the top of the road. The distance from where Paramo was standing and where Keiper was standing was 45 feet. Upon hearing the threats and observing Keiper's conduct in reaching across his body and under his vest, Officer Paramo had an honest and reasonable fear that Keiper would try to shoot Officer Trenery and/or Cadet Hensic. Officer Paramo shot at Keiper five times, striking him three times. He ceased firing when Keiper went down.

Confronted with Keiper's threats that he was going to shoot Officer Trenery and Keiper's body movements as if he were going to pull out a weapon, Officer Trenery had an honest and reasonable fear that Keiper would carry out his threat to shoot and kill him. Prior to any discharge of a firearm, Keiper turned away from Officer Trenery briefly and then turned back and said, "Fuck you, I'm going to shoot you" or "I'm going to shoot you motherfucker." Officer Trenery shot at Keiper based on that fear. He ceased firing when Keiper went down. A replica gun was found on the ground nearby.

The officers did not overreact and shoot at Keiper because he turned away or it appeared as if he was about to flee. It was only when Keiper turned back, made additional threats, and acted as if he were going to carry out such threats that the officers shot. To speculate or conclude that the officers should have waited until they actually saw a firearm being pulled out would have most certainly put lives in imminent jeopardy.

It is also noteworthy that two veteran law enforcement officers with 12 and 11 years of experience, both made the split second determination that lives were in imminent danger if they did not shoot. Cadet Hensic also believed that Keiper was going to shoot them. Based upon witness statements, the shots were fired almost simultaneously. Both officers independently determined that Keiper represented a significant threat of great bodily harm or death.

Keiper's death appears to be the culmination of events calculated to result in a "suicide by cop." Interviews with close friends of Keiper's indicated that he had been depressed and suicidal and his friends speculated that he desired to end his life. Keiper mentioned that he was "going to let a cop pull the trigger."

VI. CONCLUSION

It is the conclusion of the District Attorney that:

- At the time Officer Paramo fired his weapon at Theodore Keiper, Officer Paramo honestly and reasonably believed that Officer Trenery and Cadet Hensic were in imminent threat of death or great bodily injury.
- At the time Officer Trenery fired his weapon at Theodore Keiper, Officer Trenery honestly and reasonably believed that he was in imminent threat of death or great bodily injury.
- Officer Paramo and Officer Trenery honestly and reasonably believed that the immediate use of deadly force was necessary to defend themselves against the danger posed by Theodore Keiper at the time they fired their weapons.
- Officer Paramo and Officer Trenery used no more force than was reasonably necessary to defend against the danger posed to them by Theodore Keiper.
- The fatal shooting of Theodore Keiper by Officer Paramo and Officer Trenery was a justifiable homicide.