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February 29, 2016

RE: JANUARY 9, 2016, ROSE VALLEY OFFICER INVOLVED SHOOTING DECISION

On January 9, 2016, three law enforcement officers were involved in an incident involving the use of deadly force by shooting David Kent, resulting in his death. The cause of death was determined to be from multiple gunshot wounds. The three law enforcement officers involved were Deputies Brent Harris and Alexis Tonissen of the Cowlitz County Sheriff's Office, and Officer Darrell Stair of the Kelso Police Department. Per Cowlitz County Deadly Force Protocol, the investigation of the incident was performed by an outside agency, The Clark County Sheriff's Office Major Crimes Unit.

I have reviewed the investigation of the incident and have concluded that under the laws, there is no legal basis to file criminal charges against the three law enforcement officers. This review is solely related to the issue of criminal liability.

My review included:

- Clark County Sheriff's Office Major Crimes Unit Investigative report;
- Debriefing by Clark County Sheriff's Office Major Crimes Unit on January 22, 2016;
- Involved Officer Interviews conducted on January 12, 2016;
- Interviews of the Witnesses and Family;
- Radio Traffic, CAD logs, and 911 calls related to incident;
- Longview Police reports;
- Cowlitz County Sheriff's Office reports;
- Kelso Police reports;
- Autopsy of David Kent on January 13, 2016 and corresponding report;
- Applicable law.

Summary of Evidence:

Initial Reporting and Pursuit:

On January 9, 2016, about 2200 hours, a citizen called 911 reporting that she approached a man to see if he needed help. He appeared to have hit a telephone pole with his van. His response to her was asking whether she had any white (methamphetamine). He also asked her to not call the police. Another citizen called 911 and reported that the man was on top of his van yanking wire off of a

telephone pole and that he was pulling away right now. Dispatch advised officers of a potential vehicle accident on Beech Street and 21st Avenue in Longview. The van reportedly fled the scene driving erratically and dangerously. It should be noted that the suspect was not identified as David Kent until after the shooting incident.

At 2226 hours, Longview police spotted the van and advised that it was heading northbound on 24th Avenue. They advised the vehicle had temporary tags and "he was running". Shortly thereafter at 2227 hours Longview Police Officer Michael Berndt advised dispatch that "he was going to ram me, he put it in reverse". The van had come to a sliding stop at a stop sign. Kent then put his van in reverse backing up towards Officer Berndt who had stopped 5-7 feet behind him and had to pull over to the side to avoid getting hit. The chase then led through residential streets to Nichols Blvd., through the Oregon Way intersection, and heading east on California Way towards 3rd Avenue. The van then turned from 3rd Avenue onto Tenant Way heading eastbound towards the I-5 freeway. The van was being pursued by multiple Longview police officers, and Cowlitz County Sheriff's Deputy Brent Harris. Pursuing officers had sirens and overhead lights activated. Longview police officers attempted to set up spike strip locations in multiple locations, but were unsuccessful. At 2230 hours, officers advised that the van was heading eastbound on Tennant Way approaching the railroad tracks at 80 to 90 mph. At 2231, Longview police terminated the pursuit just prior to the Cowlitz Bridge due to the van's excessive speeding and driving without headlights on.

Cowlitz County Deputy Brent Harris continued pursuit and caught up to the van just over the bridge. They crossed over the I-5 overpass towards the roundabout heading out to Old Pacific Highway. Officer Darrell Stair and a civilian passenger had responded to the area near the roundabout. Officer Stair saw the van coming towards the roundabout with his lights off and estimated it was driving 80 mph. When driving through the roundabout the van began driving slower and was being following by Deputy Harris who had his overhead lights on. The van's headlights were still off. Officer Stair says that Deputy Harris turned his overhead lights off shortly thereafter. Officer Stair told dispatch he was the only cover officer for Deputy Harris and began following. Deputy Harris was permitted by his Sergeant to follow the van, but not pursue. Deputy Harris deactivated his overhead lights. On Old Pacific Highway the van nearly struck a car who was turning into the RV business. The van turned his headlights on shortly thereafter and was driving normally. They turned left on Rose Valley road.

At this point law enforcement had probable cause for the crimes of felony eluding and assault in the third degree. Deputy Alexis Tonissen was responding from the Hall of Justice and caught up to the officers on Rose Valley Road. She then took second position behind Deputy Harris. Cowlitz County Sheriff's Office Sergeant Corey Huffine also responded.

It should be noted that during the pursuit of the van, Longview police responded to the original location of the reported accident and identified cut marks on the wood pole and fresh sawdust on the ground. At 2251 hours, dispatch advised officers that it appeared that the power pole had been cut on with a chainsaw or axe and that the suspect may still have it in his possession.

While driving up Rose Valley, the van would randomly speed up, slow down, use signals, and abruptly stop. During the drive up Rose Valley road Officer Stair eventually trailed the deputies approximately 20 seconds. Eventually, at the 8900 block of Rose Valley Road, the van suddenly stopped. The location was a rural one-lane road, with a steep downhill embankment to the right, and a steep uphill embankment to the left.

Later examination showed that Deputy Harris' K-9 Patrol Expedition was located 48 feet behind the van, Deputy Tonissen's Crown Victoria Cruiser was 14.5 feet behind Deputy Harris' Expedition, and Officer Stair's Patrol Charger came to a stop 34 feet behind Deputy Tonissen's vehicle. All vehicles were fully marked with overhead lights and push bars.

Use of Less Lethal Force.

Deputy Harris stated he immediately activated his vehicle spotlight and initially intended on releasing Fritz, his K-9 dog. However he did not do so because Kent immediately started a chainsaw. Both deputies stated Kent came directly back to Harris' Expedition and started cutting on the front driver wheel well. Deputy Harris stated he thought Kent was going to kill either him or Deputy Tonissen. Deputy Tonissen considered the chainsaw to be a deadly weapon at this point. Sometime during this initial confrontation Deputy Tonissen had transmitted over the radio at 22:56:26 hours "chainsaw". The sound of a chainsaw can be heard on the transmission. Both deputies reported that they were giving continuous verbal commands for Kent to put down the chainsaw. Kent did not, and then proceeded to cut on the driver's side of Deputy Harris' K-9 Expedition. Later examination showed cut marks on the driver side front tire as well as the door molding on driver side of Deputy Harris' Expedition.

Deputy Tonissen stated Kent's attention was then drawn inside the Expedition where Fritz, the K-9 unit was located. Kent's attention then focused on the deputies. Both deputies state that Kent engaged with Deputy Tonissen. She estimated she was 15-20 feet away. Deputy Harris stated Kent charged her. They both deployed their tasers and Kent went down. The deputies believe the taser did not cycle for the full five seconds, or that Kent fought through it. Later examination of the taser records show that one taser cycled for 3 seconds, and the other for a 5 second cycle and a 2 second cycle. It appears only one taser connected with Kent. Deputy Tonissen's intent in tasing Kent was to get him away from the weapon and in custody. As Deputy Harris was trying to move in and get on top of Kent to detain him, Kent was able to grab the chainsaw and get up before Deputy Harris could get to him. Deputy Harris retreated towards the passenger side of the vehicles. The chainsaw was still running and Deputy Harris stated that the chainsaw was revving back up. Deputy Harris stated Deputy Tonissen backed up and he lost sight of her around the driver side of her vehicle. Neither deputy reports Kent making any statements during this time.

Use of Deadly Force:

Both deputies report that Kent began chasing Deputy Tonissen. Deputy Harris states that when Kent began chasing Deputy Tonissen all he could think was that "he's going to kill her with the chainsaw, and I've got to stop him." He also believed he had the opportunity to kill her, especially if she fell. Deputy Tonissen also reports Kent began chasing her, and she turned and ran to find cover. At this point, she thought she was "gonna die" and that he was gonna "kill us with that chainsaw." Deputy Harris states at this point he drew his pistol and began firing from the passenger side of Deputy Tonissen's vehicle. He stated "he had to stop him from getting-and trying to kill Alexis." Deputy Harris then heard gunfire from the rear side of Tonissen's vehicle, but did not know location of the other officers. He states Kent then made his way back towards Tonissen's vehicle.

Just prior to his arrival, Officer Stair heard Deputy Tonissen's transmissions over the radio and he could hear the frantic nature of her voice. Officer Stair stated you could tell they were in a chaotic scene and heard a chainsaw in the background. He parked behind Deputy Tonissen's vehicle, and illuminated his spotlight down the driver side of the vehicles. Officer Stair saw a mass of activity on the driver's side of a vehicle with deputies scrambling and Kent swinging a chainsaw. He believed Kent was swinging the chainsaw at the deputies and it was revving between slow and high speed. The civilian passenger stated when they arrived Kent had a chainsaw in his hand, taser wires attached to him, and was legitimately charging towards the officer with the chainsaw. He states the chainsaw was running and he kept lunging it forward...very threatening, and was not holding it defensively. He felt Kent was about 10-15 feet from the closest officer. He described Kent's face looking like "kill mode." He also stated that at one point Kent charged, and the officers had to legitimately move back.

Officer Stair got out of his vehicle drawing his firearm. He observed Deputy Tonissen "running, sprinting towards me with the suspect chasing her with the chainsaw." She was screaming or gasping and estimated Kent to be about a half to a full car length behind her. He had lost sight of Deputy Harris at this point. Deputy Tonissen then ran into him falling to the ground. At this point, Officer Stair felt that both his life and Deputy Tonissen's were threatened, so he shot an estimated 5-10 unsighted rounds at Kent to get him off of them because he was closing distance. He felt Kent had slowed, but was still moving toward them so he picked up his front sight and put more direct fire on Kent. Deputy Tonissen states when she got up, she heard gunfire. Officer Stair recalls hearing shots from what he believed was Deputy Harris from an L-position.

Officer Stair states that the suspect was flinching, but not going down. He states Kent then moved towards the front of Deputy Tonissen's vehicle where Deputy Harris was located. At this point he heard Tonissen firing rounds next to him so he moved right and had to reload his pistol because the slide was in lock position. After he reloaded, Kent appeared to go down to his knees but was fighting to get up. At this point, Officer Stair says he started firing skip rounds into the ground to prevent Kent from getting back up and advancing on them. The purpose of skip rounds was to turn the bullets into fragments and to kick up debris to hit the target with more projectiles.

Deputy Tonissen recalls when she started firing rounds that Kent was on the driver's side of her vehicle. She believes she advanced towards Kent and she didn't know where Deputy Harris was. She knew that Kent had run at her, so she didn't know if Kent had broken off and was now running towards Deputy Harris. Both Officer Stair and Deputy Tonissen state that Kent was moving around and made his way to the front of Tonissen's vehicle. Both state that he may have been trying to avoid fire, but never gave any indication of surrendering.

Related to the shooting, the civilian passenger described the amount of shots fired as "clips, multiple." He said it looked like Kent got hit but he didn't go down at all and it didn't appear to faze him. He stated the chainsaw was still revving, and Kent was moving around and "he was not giving up at all." The last time he saw Kent, he was standing in front of Deputy Tonissen's vehicle and then ducking like he was trying to avoid bullets. However, he was still revving the chainsaw and waiving it in the air. Due to obstructions, he did not see Kent go down. However, he did hear Deputy Tonissen over the radio say "one down."

Deputy Harris reported that when Kent moved back to the front of Deputy Tonissen's vehicle, Deputy Harris retreated back. Kent was still moving around with the chainsaw running. At this point Deputy Harris stated the suspect looked at him. He thought Kent was going to engage him because he was thinking Kent thought "there's only one of you and there's two over there, I'm gonna come get you." Deputy Harris continued to fire. He did not have any cover from Kent, and he still considered him a threat as he continued to maintain control of the chainsaw. Furthermore, it didn't appear shots were taking effect on Kent. Finally, after Kent had moved to the rear passenger corner of his Expedition, Deputy Harris states that Kent did go down. Deputy Harris believed he gave additional verbal commands when firing shots, but couldn't say for sure. At no time did he hear Kent make statements.

Kent ultimately went down near the rear passenger side of Deputy Harris' Expedition with the chainsaw by his side. Once this occurred, all three officer stated they ceased fire. Officer Stair then screamed "don't touch the chainsaw, get your hands out away from the chainsaw." No further movement was noted from Kent. CAD logs show that Deputy Tonissen radio transmitted "one down" at 22:56:22 hours.

Sergeant Huffine arrived shortly after the incident and checked the suspect for vitals, but he appeared deceased.

Related to Kent's actions during this incident, Deputy Tonissen reported that he made no motions or indications of ever surrendering despite having many opportunities. She further stated that he continued to move in an aggressive manner.

As previously noted, it was not until after the incident that it was determined the suspect was David Kent.

Based upon subsequent pistol magazine count and spent bullet casings recovered at the scene, it was determined that Deputy Tonissen fired 17 or 18 rounds, Deputy Harris fired 25 rounds, and Officer Stair fired 24 rounds.

Kent's body was examined on January 12, 2016. It was determined that he sustained 14 bullet-related wounds. He sustained five gunshot wounds of the chest, abdomen, and pelvis: which included a shot to the right upper abdomen, anterior chest, anterior abdomen, back and chest, and the lower back and abdomen. Kent sustained five gunshot wounds to the arms, hands, and wrists: which included a shot to the right middle finger, right upper arm, right second finger base, left wrist, and the left forearm. Kent also sustained four gunshot wounds to his legs: which included a shot to his right thigh, lower left leg, left lower quadricep, and the right buttocks and pelvis. Numerous bullet injuries were identified as superficial. Kent's death was determined to be caused from multiple gunshot wounds.

Investigation of the scene showed that Deputy Tonissen's Crown Victoria received 24 defects from bullets which included 17 defects down the driver side from back to front, and 7 defects across the hood area appearing to come from the passenger side. Deputy Harris' Expedition had one bullet defect that shattered the rear window, and caused shrapnel injury to K-9 Fritz's nose and neck. Furthermore, The Expedition did have cut marks both on the front driver's side tire, as well as the plastic door molding on the driver's side. Bullet defects were also found in the pavement short of where Mr. Kent went down to the ground. It was also apparent the chainsaw had been damaged and appeared to have been hit multiple times by bullets including the chain coming off track. Diagramming of the located spent bullet casings were also consistent with the statements of the officers and their locations during this incident.

Legal Analysis:

When reviewing an investigation related to the use of deadly force by law enforcement officers, Washington law authorizes law enforcement officers to use deadly force in the performance of their duties under certain circumstances.

RCW 9A.16.040, reads in pertinent part:

- (1) Homicide or the use of deadly force is justifiable in the following cases:
 - (b) When necessarily used by a peace officer to overcome actual resistance... in the discharge of a legal duty;
 - (c) When necessarily used by a peace officer or person acting under the officer's or person acting under the officer's command and in the officer's aid:
 - (i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony

- (2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer, or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a “threat of serious physical harm” are as follows:
- (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as a threat; or
 - (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm...
- (3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

Here, the law enforcement officers were trying to arrest and apprehend Kent based upon probable cause for committing the earlier felonies of assault in the third degree and felony eluding. Under the law they had a reasonable belief that Kent had committed these felonies. Furthermore, they did not use deadly force against Kent until he attacked Deputy Tonissen by chasing her with a running chainsaw. This action itself constituted the felony of assault in the second degree by means of a deadly weapon. Consistent with the statute there was probable cause to believe that Kent posed a “threat of serious bodily harm” to Deputy Tonissen and the other officers.

The evidence also showed that the use of lesser force was not effective with Kent. The deputies first attempted verbal commands. From the time that Kent exited his vehicle armed with a running chainsaw until he was cutting on Deputy Harris’ patrol vehicle, both deputies were commanding him to put the chainsaw down. He did not comply. Deputies also attempted less lethal force by tasing Kent after he was cutting on the Deputy Harris’ patrol vehicle. This put him on the ground temporarily, but did not stop him. Kent grabbed the chainsaw, got up, and re-engaged the deputies. It was evident that the officers’ attempts to use non-lethal force were ineffective and Kent continued to pose a risk of serious bodily harm. Kent began to pursue Deputy Tonissen with a running chainsaw. At this time police used deadly force. All three officers stated that Kent did not give any indication of surrendering, and this was corroborated by the civilian. Therefore, it was reasonable to infer that Kent had no intention of complying with the officers’ commands, and it was reasonably necessary to use deadly force.

Thus, in applying the law to the evidence, the use of deadly force by the officers was necessary and justified. Additionally, there was no evidence that the officers acted with malice or in bad faith.

Conclusion:

After reviewing the investigation of the Clark County Sheriff's Office, I have determined that the officers' use of deadly force was justified. They will not face criminal charges as a result of this incident. Any questions related to this matter should be directed to me.



Ryan P. Jurvakainen
Cowlitz County Prosecuting Attorney