



PROSECUTING ATTORNEY | ANTHONY F. GOLIK

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December 1, 2016

Chuck Atkins, Clark County Sheriff

Re: Officer Involved Shooting review

Involved Officer: Clark County Sheriff Deputy Albin Boyse

Decedent: Kenneth Pointer

Dear Sheriff Atkins:

This Officer Involved Shooting (OIS) case review was conducted pursuant to the agreed policy of the Clark County Prosecutor's Office and Clark County law enforcement agencies whereby the Prosecutor's Office reviews all OIS incidents that occur in Clark County. Pursuant to this agreement, all OIS incidents are referred by law enforcement to the Prosecutor's Office for review.

Based on my review of this case, I find that Deputy Albin Boyse acted lawfully in this incident.

In conducting my review of this case, I have reviewed transcribed interviews of Deputy Boyse as well as interviews of all law enforcement officers involved in this case. I have also reviewed interview transcripts of all civilian witnesses to this incident who were identified and interviewed by investigating detectives. I have reviewed all police reports generated by investigators in this case. I have also reviewed documentation of the scene of this incident to include video, photographs, and diagrams of the scene. I have also reviewed the Medical Examiner's report to include a report by the Washington State Toxicology lab.

**Facts**

On June 16, 2016 Kenneth Pointer robbed the US Bank at 1607 Main Street in Vancouver. The victim bank teller reported to police that a man approached her teller station wearing a hoody sweater with the hood over his head. She reported the man handed her a note that read "Robbery, 20's, 50's." The teller gave the robber (Mr. Pointer) \$729.00. The money had a GPS tracking device hidden in it. Review of photos from bank surveillance cameras show Mr. Pointer as described by the bank teller. As soon as Mr. Pointer left the bank, the teller pressed an alarm button notifying 911 and law enforcement began to respond to the bank robbery. Mr. Pointer fled the scene of

the robbery in a blue Suzuki Samurai vehicle. Witnesses to the robbery did not give law enforcement a description of the vehicle used in the robbery. However, the GPS tracking device hidden in the stolen money began to give law enforcement information regarding the tracking device's speed and direction of travel. Law enforcement used the GPS tracking device information to track Mr. Pointer to the area of NE 10<sup>th</sup> Ave and NE 219<sup>th</sup> Street in Battle Ground.

Deputy Boyse is an 18 year veteran of the Sheriff's department. At the time of this incident, his primary assignment was as a school resource officer at Columbia River High School. Deputy Boyse also serves as a member of the Southwest Washington regional SWAT team as a medic. Deputy Boyse became aware of the bank robbery via his portable radio when he heard alert tones put out by 911 dispatch indicating a serious crime had occurred. Once he heard the alert tones, Deputy Boyse began listening to his radio to monitor the event. Deputy Boyse became aware the call was for a completed bank robbery and that the suspect was being tracked via a GPS tracker in the stolen money. When Deputy Boyse heard over his radio that the suspect was heading northbound on I-5, he drove toward to I-5 and 99<sup>th</sup> Street. When he arrived at that location, dispatch advised the robbery suspect passed Deputy Boyse's location and was continuing north on I-5. Deputy Boyse got on the freeway to follow the suspect.

Through information transmitted by dispatch, Deputy Boyse drove to the intersection at NE 10<sup>th</sup> Ave and 219<sup>th</sup> Street to intercept the bank robbery suspect. Deputy Boyse drove south on 10<sup>th</sup> Ave from the intersection and he saw Mr. Pointer's vehicle approaching him from the opposite direction. When Deputy Boyse saw the suspect vehicle, he activated his overhead lights and turned to follow the Suzuki north on 10<sup>th</sup> Ave. Deputy Boyse pulled in behind Mr. Pointer's Suzuki and followed directly behind it. Mr. Pointer did not pull over or comply. When Mr. Pointer reached the NE 10<sup>th</sup> Ave and 219<sup>th</sup> Street intersection, he proceeded into the intersection against the red light. There were numerous police vehicles at the intersection at this time.

In his tape recorded interview, Deputy Boyse stated at the time the driver of the Suzuki did not pull over, he was certain the driver was the bank robber. Deputy Boyse stated he decided to initiate a PIT maneuver to stop the Suzuki. Deputy Boyse stated he felt he needed to stop the Suzuki because a police pursuit would begin if he did not. Deputy Boyse feared a pursuit would endanger the lives of civilians. Deputy Boyse used his patrol vehicle to push the left rear of the Suzuki as the Suzuki attempted to drive left through the intersection. Deputy Boyse was successful in spinning the Suzuki with the PIT maneuver. When the Suzuki spun around, Deputy Boyse's patrol vehicle and the Suzuki ended up colliding and coming to rest driver's door-to-driver's door. Deputy Boyse stated having his vehicle end up driver's door-to-driver's door with the suspect vehicle was not the intended final position for the vehicles at the completion of the PIT maneuver. As Deputy Boyse completed the PIT maneuver, other officers pinned the Suzuki in place with their patrol vehicles.

In his recorded interview, Deputy Boyse stated that as soon as his vehicle came to rest he looked at the driver of the Suzuki. Deputy Boyse stated he saw the driver looking

back at him. Deputy Boyse said the driver of the Suzuki was looking slightly down at him as the Suzuki was a little higher than Boyse's patrol vehicle. Deputy Boyse stated he saw the Suzuki driver had his left hand on the steering wheel and his right hand was down out of Deputy Boyse's sight. Deputy Boyse stated the Suzuki driver appeared to be reaching under his seat with his right hand.

Deputy Boyse stated when he observed the Suzuki driver appearing to reach down with his right hand, Deputy Boyse drew his pistol and screamed at the top of his lungs "Show me your hands. Show me your hands. Show me your hands or I'm gonna shoot you." Deputy Boyse stated that although the window of his vehicle was up at this time, he believed his voice should have been audible outside his vehicle. Deputy Boyse stated he has a loud voice and he was yelling. Boyse stated his vehicle siren was not on at this time. Deputy Boyse stated the driver of the Suzuki did not comply with his commands to show his hands. Deputy Boyse stated he observed the Suzuki driver glance at him and continue to appear to be reaching under his seat with his right hand. Deputy Boyse stated he knew the driver of the Suzuki had just robbed a bank and he appeared to be reaching for something rather than showing his hands. Deputy Boyse stated at this point he believed the Suzuki driver was reaching for a gun and that he was about to shoot Deputy Boyse in the face. Deputy Boyse stated his life flashed in front of his eyes and he believed he was about to be shot. Deputy Boyse stated he was screaming at the driver of the Suzuki, but the driver did not comply. Deputy Boyse stated at the moment he fired his pistol he did so because he believed he was about to be shot if he did not fire.

Deputy Boyse stated he believed at the time of the incident that he fired three or four shots. Evidence from the scene showed Deputy Boyse fired a total of three shots. Each of the shots struck Mr. Pointer causing his death.

After Deputy Boyse shot Mr. Pointer, other officers pulled Mr. Pointer out of his vehicle. As Mr. Pointer was removed from his vehicle, money from the robbery fell out of the vehicle along with Mr. Pointer. The money could be easily identified as money from the robbery as some of the bills were cut out in the center where the GPS tracker had been placed in the money. When Mr. Pointer was taken out of his vehicle, Deputy Boyse retrieved his first aid kit from the trunk of his vehicle. Deputy Boyse started to apply first aid to Mr. Pointer until AMR medics arrived and took over. The GPS tracker was located in the Suzuki. No weapon was located on Mr. Pointer or in his vehicle. The evidence showed Mr. Pointer was not in fact armed. It is unknown what Mr. Pointer was reaching for when he was shot in this case.

Law enforcement officers from the Vancouver Police Department, the Washington State Patrol, the Clark County Sheriff's Office and the Battle Ground Police Department were present in the intersection when this shooting occurred. Each of the law enforcement officers who were present were interviewed and gave recorded statements detailing their observations.

Deputy Chuck Kerr drove into the intersection behind Deputy Boyse and Trooper Hughes. Deputy Kerr stated after Boyse executed the PIT maneuver, he observed the vehicles stop driver's door-to-driver's door. Deputy Kerr stated he observed the driver of the Suzuki try to manipulate something inside his vehicle, but he could not tell what it was. Deputy Kerr stated he then lost sight of the driver of the Suzuki because other patrol cars drove in front of him. Deputy Kerr then moved his vehicle to the rear of the Suzuki to prevent it from being backed up and driven away. Deputy Kerr stated he exited his vehicle and moved to the front passenger side of his vehicle when he heard the first shot. Deputy Kerr stated prior to hearing the first shot, he heard someone give voice commands that included "Have hands" and "Stop." Deputy Kerr indicated it was difficult to hear the voice commands because there was a lot of noise as police vehicles were still responding with sirens on. In summary, Deputy Kerr stated he saw Mr. Pointer's actions briefly before the shooting, but not at the moment of the shooting.

Vancouver Police Sergeant Pat Moore was present in his police vehicle at the intersection when Deputy Boyse executed the PIT maneuver on Mr. Pointer's vehicle. Sgt. Moore was one of the officers waiting on the east side of the intersection when Mr. Pointer entered the intersection and Deputy Boyse used the PIT maneuver. Sgt. Moore stated in his interview that when Deputy Boyse used the PIT maneuver, Sgt. Moore moved his vehicle to the front of Mr. Pointer's vehicle in an effort to pin Mr. Pointer's vehicle in place. Sgt. Moore stated he observed that Mr. Pointer and Deputy Boyse were very close together after the completion of the PIT maneuver. Sgt. Moore stated he did not see Mr. Pointer show his hands. Sgt. Moore stated the incident happened very quickly and that Deputy Boyse fired within several seconds of the cars stopping after the PIT maneuver. Sgt. Moore stated he was still in his vehicle when Deputy Boyse fired.

Vancouver Police Officer Romiti stated in his interview that he observed the PIT maneuver and that he pulled his vehicle in behind Deputy Boyse's vehicle after the PIT was completed. Officer Romiti stated when he stopped his vehicle, he opened the driver's door to his vehicle and pulled his gun out. Officer Romiti stated he pulled his gun out because the driver of the Suzuki was a bank robbery suspect and he expected the Suzuki driver would be armed. Officer Romiti stated he was two-thirds of the way out of his vehicle, standing behind his driver's door when the first shot was fired. Officer Romiti stated the incident happened fast. Officer Romiti stated he could hear the deputy in the vehicle in front of him (Deputy Boyse) giving commands, but he could not hear what the Deputy was saying because he and other officers were yelling, too. Officer Romiti stated he was yelling "Show me your hands". Officer Romiti stated after he was yelling commands, he heard a second shot. Officer Romini stated he could not hear the Deputy in front of him yelling before the first shot, but he could hear the deputy and other officers yelling before the second shot. Officer Romini stated all the officers were yelling for Mr. Pointer to show his hands. Officer Romiti stated he could see Mr. Pointer's left hand on the steering wheel, but he could not see his right hand. Officer Romiti stated Mr. Pointer's right hand was not visible at any time during the incident. Officer Romiti stated after the first shot, while all the officers were yelling at him, he

observed Mr. Pointer was looking down and to the right, he was moving around, and his right hand was down and not visible.

Vancouver Police Officer Brian Billingsley stated in his interview with detectives that he was in his patrol vehicle at the intersection along with Vancouver Sgt. Pat Moore. Officer Billingsley stated they both had their overhead lights on. Officer Billingsley stated he observed a County vehicle perform a PIT maneuver on the Suzuki in the intersection. Officer Billingsley stated after he observed the PIT maneuver, he began to turn his vehicle around and other patrol vehicles moved into positions that blocked his view of what happened right after the PIT. Officer Billingsley stated he parked his vehicle and while getting out he heard a shot. Officer Billingsley stated he then ran to the front of his vehicle to get behind a Trooper's vehicle when he heard another shot. Officer Billingsley stated he did not know where the shots came from and he did not hear yelling or commands. Officer Billingsley stated he heard the second shot quickly after the first shot. Officer Billingsley stated after he heard the second shot, he then observed the driver of the Suzuki slump back in his seat.

Vancouver Police Officer James Kelley stated in his interview that he was behind other officers as he headed north toward the intersection. Officer Kelley arrived in the intersection after the PIT maneuver was completed. Officer Kelley stated when he arrived, he observed police vehicles were fanned out around the Suzuki and he saw Sgt. Moore out of his vehicle with his weapon drawn. Officer Kelley stated he exited his vehicle with his rifle. Officer Kelley stated as he exited his vehicle he heard a gunshot and he saw the driver of the Suzuki slump back in his seat. Officer Kelley does not indicate in his interview that he saw either Deputy Boyse or Mr. Pointer at the time of the shooting until the moment of the last shot when he observed Mr. Pointer slump back in his seat.

Vancouver Police Corporal Duane Boynton stated in his interview with detectives that he was in line behind the Suzuki with other officers and he observed the PIT maneuver in the intersection. Cpl. Boynton stated he moved his vehicle into the intersection when the PIT maneuver occurred. Cpl. Boynton stated he got out of his vehicle and ran to the trunk of his car when he heard the first shot. Cpl. Boynton stated he believed other vehicles were still moving when he was at the back of his vehicle and that he heard the first shot from that location. Cpl. Boynton stated he heard yelling that sounded like "Hands, hands." Cpl. Boynton stated he heard the shooting from his location at the trunk of his vehicle, but he did not see the shooting. Cpl. Boynton stated that after the shooting, he assisted Deputy Boyse in getting out of his patrol vehicle. Cpl. Boynton stated after he helped Deputy Boyse out of his vehicle, he asked Boyse if he had been shot. Deputy Boyse responded he had not been shot. Cpl. Boynton stated Deputy Boyse went on to tell Cpl. Boynton that after Boyse completed the PIT maneuver, he yelled commands, but the suspect reached down under his seat and Deputy Boyse fired his weapon.

There were multiple civilian witnesses present in the area of the shooting in this case. Some of the civilian witnesses were motorists and others were present at the drive in

restaurant located on the north east corner of the intersection where the shooting took place. Each of the civilian witnesses who could be identified by investigators was interviewed. None of the civilian witnesses observed this incident from a view point where they could see Mr. Pointer's actions at the time of the shooting.

### **WSP Dash Cam video of incident**

Trooper Matt Hughes was following directly behind Deputy Boyse when Deputy Boyse executed the PIT maneuver. Trooper Hughes had a dash mounted camera in his patrol vehicle. The dash cam video captures the PIT maneuver. After Deputy Boyse executed the PIT maneuver, Trooper Hughes drove his patrol vehicle off to the left of Boyse and Pointer's vehicles and then back to the right. Trooper Hughes made this maneuver to get into proper position to help stop Mr. Pointer's vehicle after the PIT maneuver. The dash cam mounted on Trooper Hughes's vehicle is pointed in front of his vehicle. When Trooper Hughes made this maneuver, his dash cam footage moved off Deputy Boyse and Mr. Pointer's vehicles and then his dash cam re-acquired Mr. Pointer's vehicle when Trooper Hughes swung his vehicle back to the right to help pin Mr. Pointer's vehicle in place.

When Trooper Hughes's dash cam points back at Mr. Pointer's vehicle, the footage shows the right rear of Mr. Pointer's vehicle and the driver's area is only partially visible. The footage does not show Mr. Pointer's actions prior to the shooting. Mr. Pointer's upper body does move into the view of the dash camera as his body moves quickly back in the seat of the Suzuki. This appears to happen as he is being shot. The video does not show any of Mr. Pointer's movements or actions with his hands just prior to the shooting as Mr. Pointer was just out of the camera frame right before the shooting.

### **Cell phone video**

Two citizens took cell phone video from their vehicles in this case. Review of the cell phone videos show they were taken from significant distance and after the actual shooting took place. Neither of the civilian cell phone videos shows Mr. Pointer's actions just prior to the shooting or the shooting. Review of the cell phone videos does not add anything of evidentiary value in analyzing the facts of this case.

### **Medical Examiner report**

The Clark County Medical Examiner's Officer performed an autopsy in this matter. The autopsy findings are detailed in an autopsy report. Cause of death is listed as multiple gunshot wounds. The gunshot wounds detailed in the autopsy report are consistent with the evidence collected at the scene of this incident and the statement by Deputy Boyse. A report by the Washington State toxicology lab is attached to the autopsy report. The Toxicology lab report indicates Mr. Pointer had 0.67 mg/L Methamphetamine and .082 g/100mL alcohol level in his blood at time of autopsy. The report indicates Mr. Pointer's blood alcohol level was over the .08 legal limit for driving and he had a non-therapeutic level of methamphetamine in his blood at the time of this incident.

### **Kenneth Pointer prior bank robbery convictions**

Mr. Pointer was convicted of bank robbery in 1998. Mr. Pointer was convicted of bank robbery again in 2006. It is possible Mr. Pointer may have believed he would be convicted of a third strike and serve a mandatory life sentence if he were arrested for the bank robbery he committed in the current case. However, both of Mr. Pointer's prior bank robbery convictions were prosecuted in the federal court system. Because Mr. Pointer's prior Bank robbery convictions were federal cases, those convictions would not have counted as prior strike offenses pursuant to Washington State three strikes law. It is unknown whether Mr. Pointer thought he would serve a life sentence in prison or some other substantial amount of time if he was arrested in this case. Based on his criminal history, it is clear Mr. Pointer was an individual who had robbed banks in the past as well as in the current case.

### **Analysis**

Washington law regarding lawful use of deadly force by peace officers is contained in RCW 9A.16.040. Subsection three of this statute states a 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. In analyzing Deputy Boyse's actions in this case, one must consider Deputy Boyse's perception of events in the moments before he fired his weapon. Deputy Boyse was clear in his recorded interview that he fired his weapon because he believed the bank robber (Mr. Pointer) was reaching for a gun. Deputy Boyse explained he had his gun drawn and he was screaming at Mr. Pointer to show his hands and telling Mr. Pointer he would shoot. However, Mr. Pointer did not show his right hand and he appeared to be reaching under his seat. Deputy Boyse was aware at this moment that Mr. Pointer had just robbed a bank and that he was reaching down with his right hand in the face of Deputy Boyse yelling that he would shoot if Mr. Pointer did not show his hands.

Deputy Boyse was forced to make a split second decision. Deputy Boyse believed Mr. Pointer could hear his verbal commands and that Mr. Pointer was choosing to reach for a weapon rather than give up and show his hands. Although Mr. Pointer did not in fact have a weapon, Deputy Boyse's conclusion that Mr. Pointer did have a weapon was reasonable under the facts and circumstances known to Deputy Boyse. Deputy Boyse's conclusion was reasonable based on his observation of Mr. Pointer's action in the moment before the shooting. The fact that Mr. Pointer did not in fact have a weapon could not have been known by Deputy Boyse at the moment he decided he needed to fire his weapon. All evidence in this case indicates Deputy Boyse fired because he reasonably believed a person who had just committed a bank robbery was about to pull a gun and shoot him if he did not shoot. All evidence indicates Deputy Boyse acted on a reasonable good faith belief that his life was in imminent danger when he fired. There is no evidence Deputy Boyse acted in bad faith or with malice in this case.

While the specific statute authorizing deadly force by officers cited above is relevant and applicable to this case, general Washington State self-defense law is also applicable in this case. Washington Pattern Jury Instruction (WPIC) 16.07 outlines the law in

Washington regarding use of deadly force in situations where the actor mistakenly believes they are in danger. The instruction states:

Justifiable Homicide-Actual Danger Not Necessary

A person is entitled to act on appearances in defending himself, if that person believes in good faith and on reasonable grounds that he is in actual danger of great bodily harm although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justifiable.

In this case, Deputy Boyse acted on an appearance. He believed Mr. Pointer was reaching for a gun. Deputy Boyse used deadly force to defend himself based on that appearance. Deputy Boyse's belief that Mr. Pointer was going to shoot him was a good faith belief based on reasonable grounds. The fact that it did develop, after Deputy Boyse acted, that Mr. Pointer was not armed is the type of situation that is contemplated by Washington self-defense law as outlined in the above jury instruction.

It will never be known why Mr. Pointer did not raise his hands when Deputy Boyse pointed his gun and screamed for Mr. Pointer to show his hands. It is possible Mr. Pointer did not hear Deputy Boyse's commands because of the sirens and other background noise. Even if he could not hear Deputy Boyse, it is only reasonable that Mr. Pointer should have put his hands up when he looked at Deputy Boyse and saw an officer with a gun pointed at him. Mr. Pointer's intoxication level from alcohol and methamphetamine could have affected his decisions and reactions. Mr. Pointer's fear of going back to prison may have affected his decisions and actions. It will never be clear why Mr. Pointer decided to reach down with his right hand when Deputy Boyse was pointing his pistol at him and screaming "show me your hands". While Mr. Pointer's reasons for acting as he did cannot be known, Deputy Boyse's reason for acting can certainly be known. Deputy Boyse acted on a reasonable and good faith belief. While the result in this case was tragic, Deputy Boyse acted lawfully in this matter.

Sincerely,



Anthony F. Golik  
Prosecuting Attorney