

STATEMENT AS PREPARED
OHIO ATTORNEY GENERAL MIKE DEWINE
OFFICER-INVOLVED SHOOTING OF
TIMOTHY RUSSELL AND MALISSA WILLIAMS
BUREAU OF CRIMINAL INVESTIGATION AT RICHFIELD, OH
FEBRUARY 5, 2013

INTRODUCTION

Good morning. I am Ohio Attorney General Mike DeWine. I just finished briefing Prosecuting Attorney McGinty, Acting Cuyahoga County Sheriff Bova, Cleveland Chief of Police McGrath, and East Cleveland Chief of Police Spotts on the results of our two-month investigation into the November 29, 2012, police-involved shooting in East Cleveland.

At 2:15 a.m., on November 30, 2012, the East Cleveland Police Department requested the assistance of the Ohio Attorney General's Office and our Bureau of Criminal Investigation (BCI) in processing the scene of what began as a police pursuit and ended in an officer-involved shooting at Heritage Middle School. That shooting, as we know, resulted in the deaths of Timothy Russell and Malissa Williams.

BCI agents responded and began to process the scene.

Three days later, on December 3, 2012, the Cuyahoga County Sheriff and the East Cleveland Chief of Police requested that the Attorney General's BCI be the lead agency in the investigation of this matter.

We have completed our investigation, and typically at this point, I would turn over our report and all the information we have gathered to the county prosecutor. We normally would make nothing, at this point, public. However, there is nothing normal about this situation, and Prosecutor McGinty and I both feel strongly that this information must be made public immediately.

After my statement, I will answer questions. Prosecuting Attorney McGinty will also be available to answer any questions. I will then release my office's complete report of the investigation, along with the over 290 individual reports used to compile it.

I now will summarize our findings.

PROCESS

The Attorney General's investigative team was comprised of 29 BCI special agents (as well as two East Cleveland police detectives and four Cuyahoga County Sheriff investigators); nine BCI lab personnel (including forensic scientists and associated managers); two BCI criminal intelligence analysts; five BCI computer forensic specialists; and three BCI office support staff. In all, 48 BCI personnel assisted with the investigation.

The BCI Crime Scene Unit documented and processed the scene and related vehicles for potential evidence.

Over the course of our two-month investigation, the investigative team conducted 120 interviews, and I want to say that every single officer who we interviewed was fully cooperative in our investigation. The interviews included officers, dispatchers, and supervisors from the Cleveland Police Department, the East Cleveland Police Department, the Ohio State Highway Patrol, the Regional Transit Authority Police Department, the Bratenahl Police Department, the Cuyahoga County Sheriff's Office, and the Cuyahoga Metropolitan Housing Authority Police Department. Additionally, investigators interviewed 13 civilian witnesses.

The investigation included a review of the available Automated Vehicle Locator data for the involved cruisers, although not all of the police vehicles were equipped with a tracking device. Radio transmission recordings were reviewed from each agency involved in the pursuit, including four separate channels of Cleveland Police Department radio traffic. Investigators also collected and studied video footage from approximately 53 surveillance, traffic, and homeland security cameras along the pursuit route.

The investigative team submitted 243 items of potential evidence to the BCI laboratory for firearms identification and to test for drugs, gunshot residue, fingerprints, and DNA. They obtained search warrants for and subsequently reviewed both of the decedents' cellular phone records. The investigators also reviewed the decedents' mental health records to possibly help explain some of their purported actions during the pursuit. This review showed that Malissa Williams had been diagnosed as a paranoid schizophrenic.¹

¹ Malissa Williams' mental health records indicate that she had been experiencing delusional thoughts at her November 6, 2012 appointment with the Alcohol, Drug Addition, and Mental Health Services Board of Cuyahoga County. Further, she missed her last scheduled appointment with the Board on November 26, 2012, when she would have received her medication.

They reviewed autopsy and EMS reports, as well as personnel records for the 13 shooters and the three non-shooters. Additionally, they enlisted outside assistance from a forensic mechanic, an accident reconstructionist, and animation experts.²

To date, the investigation includes in excess of 290 individual reports, documenting the various aspects of the investigation. The following narrative is a summary of the events of November 29, 2012, based on the information that investigators gathered and the witness accounts included in those 290-plus investigative reports.

NARRATIVE

On the evening of Thursday, November 29, 2012, Cleveland Police Department Officer John Jordan was working alone, in plain clothes, in an unmarked police vehicle, as part of the Downtown Service Unit. Jordan's usual partner, Officer Christopher Wilson, had called-off sick. As part of Jordan's normal patrol routine, he would frequent an area near the 2100 block of Lakeside Avenue that was known for drug use and trafficking, often referred to as "the wall" (near the Lutheran Metropolitan Ministry, a men's homeless shelter).

At approximately 10:26 p.m., Jordan radioed his dispatch center, requesting Ohio license plate "FSA3495" (Timothy Russell's vehicle) be run for "info," stating the vehicle was parked at East 22nd and Lakeside. Dispatch advised Jordan that it checked "clean," providing the year, make, and color of the vehicle, along with the name and city of the registered owner and expiration date of the registration.

In his second interview, Officer Jordan told investigators that he initiated a traffic stop of the subject vehicle on East 18th Street, between Rockwell and Superior, after observing a turn signal violation. He stated his intention was to investigate the occupants of the vehicle, believing they were involved in illegal drug activity.

The vehicle stopped for several seconds, during which Jordan claimed the passenger was screaming and acting unstable. Shortly after Jordan exited his vehicle, but before approaching the subject vehicle to make contact with the occupants, the vehicle accelerated away, turning right onto Superior Avenue.

² Outside experts included forensic mechanic H. Lyn Smith of Smith and Company of Akron, OH, to examine the subject vehicle for backfiring potential; accident reconstructionist Sergeant Jason Thorne of the Ohio State Highway Patrol to calculate subject vehicle speed during the pursuit; and animation experts from Visual Evidence of Valley View, OH, to create a visual depiction of the events at Heritage Middle School.

Though Officer Jordan pursued, he eventually lost sight of the subject vehicle on Superior Avenue.

He did not report this to dispatch nor did he become involved in the subsequent pursuit or shooting incident which followed. There is also no evidence that any officer involved in the subsequent pursuit or shooting was aware of Officer Jordan's prior contact with the subject vehicle. Although apparently not known to the officers involved in the subsequent pursuit, Timothy Russell did have a prior history of evading law enforcement, both on foot and in a vehicle.

Less than five minutes after Jordan's brief pursuit, the subject vehicle drove past the Justice Center, on the 200 block of St. Clair Avenue, traveling at a speed calculated to be approximately 66 miles per hour.³ Outside the municipal building at 205 W. St. Clair Avenue, Officer Vasile Nan was retrieving a computer from his marked police cruiser to give to Mobile Services Unit Officer Alan Almeida. Both officers were standing outside when the subject vehicle passed.

They both told investigators that just as the subject vehicle passed them, a loud bang emanated from the vehicle, which they said they believed, at the time, to be a gunshot directed toward them. Investigators later learned that multiple individuals, including both Officers Nan and Almeida, four detectives from the Cleveland Police Department who were nearby, a security guard, and a parking attendant also heard the noise emanating from the car and later reported to investigators their belief that it was consistent with a gunshot.⁴ In fact, at the time of the incident, the parking attendant expressed her belief to Officer Almeida that she heard what she believed was a gunshot and that she ducked for cover and observed the two officers also ducking for cover.

As part of the subsequent investigation, a forensic mechanic examined the subject vehicle and indicated his belief that this vehicle was, in fact, prone to loud backfiring and exhibited evidence of past backfiring.⁵

Officer Nan ran to his cruiser and radioed to dispatch a belief that they had been shot at from a vehicle occupied by two black male occupants (incorrectly believing at the time that both subjects were male). Officer Nan transmitted the following on

³ Sergeant Jason Thorne from the Ohio State Highway Patrol documented this calculation in Reconstruction Report 2012-531-00.

⁴ Each individual provided statements indicating a belief they heard a gunshot.

⁵ Forensic mechanic, H. Lyn Smith of Smith and Company of Akron, OH, assessed the subject vehicle and determined that the vehicle "has the necessary and multiple conditions to expect backfiring" and that "this vehicle exhibits expected signs that backfiring has occurred." For more details, see full report issued December 14, 2012.

radio channel 2 (the primary radio frequency used during the pursuit): “There were shots fired out of a vehicle. I was conferring with Mobile Support on uh St. Clair. Just notified the 3rd. Popped a round right as he drove by us.” Shortly thereafter, he advised, “Use caution -- occupants are armed.” Meanwhile, Officer Almeida ran into the building to retrieve his duty belt and later joined the tail-end of the pursuit in a marked cruiser.

Another marked cruiser in the area, manned by Officers David Siefer and James Hummel, heard Officer Nan’s radio transmission and observed a vehicle matching the description on the Detroit/Superior Bridge. They attempted to stop the vehicle. However, it fled, failing to obey the order to stop (emergency lights and sirens). At approximately 10:41 p.m., Officer Siefer radioed: “He’s pointing the gun. He’s pointing the gun out the back window. Heads up. Heads up. Passenger is pointing a firearm out the back window. Everybody be careful.”

A request for spike strips was then made, followed by Officer Nan reiterating on the radio, “He will fire so be careful.” Additional radio traffic advised, “He had the gun when he went around the roundabout.” Officer Siefer then transmitted on the radio, “Passenger is turning back around again pointing a firearm.”

At least two officers reported to investigators hearing the subject vehicle backfire during the pursuit, although they did not radio this information at the time to others. One of those officer said that he heard a separate “bang” from the vehicle and then observed debris in the roadway, incorrectly believing and then transmitting on the radio that the vehicle had blown a tire.

An additional radio transmission during the pursuit informed officers that the subject vehicle had rammed a marked police cruiser. However, investigators later learned that it was an accidental contact that occurred shortly after entering East Cleveland during a quick turn in the pursuit, with Officer Kevin Fairchild’s cruiser striking the rear of the subject vehicle.

The ensuing pursuit of the subject vehicle lasted approximately 22 minutes, reportedly at times reaching speeds in excess of 100 miles per hour.⁶ Surveillance videos obtained along the pursuit route show, at one point, a minimum of 62 police vehicles in pursuit or following along the pursuit route. Pursuers included officers in marked and unmarked Cleveland Police Department vehicles, as well as Ohio

⁶ This estimate is based on the statements of pursuing officers, with the lead car being the primary source of information. For more detail, see interview of Officer James Hummel on December 12, 2012.

State Highway Patrol troopers, Cuyahoga County Sheriff deputies, Bratenahl Police Department officers, and officers of the Regional Transit Authority Police Department, all of whom were peripherally involved.

During the pursuit, significant radio traffic from pursuing officers, and relayed by dispatchers, indicated a belief that the passenger of the vehicle was armed with a gun; had already fired at officers; was pointing the gun at pursuers; and was reloading the gun. Each officer was asked during their individual interviews what radio traffic they heard and what radio transmissions they made. All 13 officers who eventually shot their weapons told investigators that they had heard radio transmissions saying the passenger was brandishing a gun. All 13 officers also reported that they heard radio transmissions regarding the alleged ramming of Officer Fairchild's cruiser, as well as information regarding the decedents' disregard of Officers Hummel and Siefer's attempted traffic stop.

At one point during the pursuit, Officer Fairchild indicated that the passenger in the subject vehicle was not, in fact, armed, but instead was wearing black gloves and holding a red pop can. He radioed, "Passenger just put his hands out asking us to stop. He does not have a gun. He has black gloves on. He does not have a gun in his hand."

He went on to radio, "There's a pop can in his hand. There's a red pop can in his hand." According to Fairchild's account to investigators, this did not, in his mind, preclude the possibility that a gun may have been otherwise involved.

The pursuit eventually entered the City of East Cleveland, where the subject vehicle entered a dead-end staff parking lot at Heritage Middle School located at 14410 Terrace Road. As the pursuit entered the parking lot, it was noted that the area was a dead-end and a request was made for the area to be blocked off. A radio transmission stated, "Alright, be advised -- he looked like he was loading a weapon." This was followed by the transmission, "Shots fired. Shots fired." At approximately 10:55 p.m., "Watch the crossfire," was transmitted, followed by an additional indication to dispatch that shots had been fired. A request for EMS was made less than a minute later.

A number of Cleveland police cruisers followed the subject vehicle into the lot, by way of the only access drive. Other police vehicles eventually blocked this drive, essentially trapping the subject vehicle (and some police vehicles) in the lot. This contributed to a situation where police personnel were located on both sides of the

subject vehicle, after the subject vehicle doubled-backed on the access drive (while apparently attempting to exit the lot).

In the parking lot, but prior to the subject vehicle doubling-back, Officer Wilfredo Diaz's police cruiser made inadvertent contact with the rear corner of the subject vehicle after the subject vehicle made a quick left turn in front of Diaz. The subject vehicle turned directions, facing back toward Diaz, jumping a curb onto a grass island. Being left-handed and believing the occupants to be armed, Diaz said that he felt vulnerable in his position behind the steering wheel, feeling unable to quickly draw and fire if necessary.

As a result, Diaz reported that he quickly exited his vehicle, failing to first place the vehicle in park. His partner later placed the vehicle in park, as it began rolling away from him. After exiting and yelling, "Stop," Diaz observed the passenger, whom he believed at the time to be a male, reach toward something and produce a black object which he said he perceived to be a gun. Diaz said he feared for his life, believing the passenger was armed and had already fired at officers. As a result, he fired his handgun one to three times at the passenger.

The subject vehicle's engine revved and the car began accelerating across the grass island, turning and coming directly toward Diaz. He stated that he felt the subject vehicle was going to ram him and pin him between the subject vehicle and his cruiser (not realizing his cruiser was rolling away). As such, he then fired his handgun one to three times at the driver.

As the subject vehicle came off the island, it straightened and missed striking Diaz. The vehicle then began traveling back out the same driveway in which it had entered the parking lot. Diaz, who was the first officer to discharge a weapon, said he believed he fired a total of four shots. However, he was uncertain exactly how many he directed toward the passenger and driver, but thought it was perhaps two rounds each. Radio traffic after Diaz fired his weapon indicated that shots had been fired, but did not specify who had fired.

The subject vehicle continued to accelerate toward the exit, in the process narrowly missing other police vehicles and officers. Officer Robert Radosevic (driver) and Officer Scott Sitek (passenger) parked their marked Cleveland Police Department cruiser (CPD 238) in the access drive, partially blocking the subject vehicle's exit route. As Officer Sitek exited the passenger door, he looked up to find the subject vehicle traveling directly toward him. He estimated it to be only

15 feet away. He told investigators that he feared he was about to be struck, and so, while running backwards, began firing his weapon at the driver, through the windshield of the subject vehicle. The subject vehicle did, in fact, strike Sisteck's open passenger door, slamming it shut, and collapsing a portion of the passenger side of cruiser CPD 238.

Upon reaching the rear of his cruiser, Officer Sisteck stated that he went to the ground for cover, remaining in this position until all following shots ceased. He learned, after the Cleveland Police Department homicide unit inventoried his remaining ammunition, that he had fired 12 times. Investigators believe Sisteck to be the second officer to discharge his weapon.

Detective William Salupo, who was on foot to the rear of the subject vehicle, observed the subject vehicle strike cruiser CPD 238 (with the subject vehicle's engine continuing to rev); heard gunfire; and saw Officer Sisteck go to the ground, incorrectly believing that he had been run-over by the subject vehicle and that he was trapped beneath it. As a result, Detective Salupo reported that he fired two rounds through the back window of the subject vehicle, toward the driver. Salupo said that he then sensed bullets were coming toward him -- bullets that he believed were coming from the subject vehicle, but in reality, were likely bullets being fired from officers positioned on the opposite side of the subject vehicle. He took cover, having fired two rounds.

Officer Cynthia Moore, who was with her partner Officer Michael Brelo in their Cleveland Police Department cruiser CPD 217 also saw the subject vehicle strike cruiser CPD 238. She said that she could see two subjects in the vehicle and what she thought were guns pointed at her. She also said that immediately following this observation, she heard shots being fired, believing the subjects were firing at her. She returned fire through the windshield of her cruiser.

Thinking she was being shot at, Moore then exited the passenger side of her cruiser and was standing next to it, still firing. She said shots were still being fired and that a lot of people were yelling and that the shooting was going on, in her words, "for forever." Officer Moore said that glass was flying at her, furthering her belief that the subject vehicle was shooting at her. During the incident, she said that she was scared and "trying not to get killed."

Officer Brelo told investigators that he drove to the right of cruiser CPD 238 and stopped his car along the access drive to the staff parking lot. He said that the

subject vehicle then began to come toward him, leading him to believe that his vehicle was about to get rammed. Brelo said that he could see both occupants in the subject vehicle, with both of them pointing dark objects at the officers in a manner consistent with how one normally holds a gun. He said he then heard shots being fired from the area of the subject vehicle, at which point he drew his weapon and shot through his own windshield into the suspects' windshield. Brelo said, "I've never been so afraid in my life. I thought my partner and I were being shot at and that we were going to be killed."

Officer Brelo reloaded in his vehicle after believing his weapon jammed. He stated that after reloading, he still believed he was being shot at and that the subject vehicle was going to ram him. He told investigators that he exited his cruiser because he was terrified the subject vehicle was going to hit it. As he moved, he fired additional rounds at the subject vehicle until his magazine was empty, reloading a second time.

Officer Brelo told investigators that for various reasons, including to avoid crossfire (by achieving a higher angle); to avoid being hit by the subject vehicle; to avoid stepping into the line of fire of other officers; to use the passenger compartment as cover; to avoid the engine block of the subject vehicle from stopping his rounds; and to gain elevation (based upon his Marine infantry training), Officer Brelo climbed on top of cruiser CPD 238 and fired downward into the subject vehicle through the windshield, eventually stepping across and firing from the hood of the subject vehicle.

Brelo stated, "I keep hearing rounds go off. I see the suspects moving, and I couldn't understand why they are still moving, shooting at us." He continued, "I never have been so afraid in my life, and I just couldn't understand why the suspects were still moving and shooting at us." Brelo stated that he was more fearful during this incident than he ever was during his military service while deployed in Iraq.

After the shooting ceased, Officer Brelo put the subject vehicle in park and removed the keys. Investigators located forty-nine casings from the scene that matched his weapon.

Officer Brian Sabolik told investigators that as he and his partner, Officer Michael Farley, arrived, the gunfire had already started. Officer Sabolik said that ahead of him he saw a cloud of smoke and kept hearing gun shots. He said that as his Field Training Officer (Farley) got out of the car, he remembered what they had taught

him in the academy -- to get out of the car because “the car is a coffin.” Sabolik got out of the car, telling investigators that he believed he was directly in the suspects’ line of fire. He shot two rounds and began running back behind his police car for cover. He retreated to the driver’s side of his patrol car, firing two additional rounds from that location. Upon his weapon being inventoried after the incident, it was determined that he fired four rounds.

Officer Farley described the scene as the “scariest thing that I’ve seen in my whole life.” As he got out of his car, he realized that he had not put on his bullet-proof vest because he had been working out and had just left it on the front seat. Officer Farley said that as he exited his car, he thought he was going to die right there; he had no vest and shots were coming from all directions.

He said that he ran up to a Cleveland Police Department cruiser, ducked down, and fired a couple shots at the driver’s side of the suspect vehicle. He thought that he had fired two shots, but found out later that he had fired four times. He said that once he got back around the car, he saw Officer Sisteck diving down. He said that he did not know at the time if Sisteck was shot or if he was just diving to get out of the way.

Officer Randy Patrick also observed the subject vehicle strike cruiser CPD 238. He said that as soon as the subject vehicle struck it, shots just started ringing out. He put his car in park, believing that the subjects were firing at him and his partner, Officer Paul Box. Officer Patrick stated that he went down to the floor for cover, but soon got out of the car through the driver’s side. He crawled on the ground because he said he thought he was being shot at.

He looked inside cruiser CPD 217 and saw that it was riddled with bullets. He said that shots continued to be fired, and he had difficulty looking over the vehicle to see what was occurring because he was taking fire. He got up and let some rounds off and went back on the ground. He stated that he was about to come back up to fire more, but then everything stopped. After his weapon was inventoried, he learned that he fired nine rounds.

Officer Box also saw the subject vehicle collide with cruiser CPD 238, and said he then heard shots begin to ring out. Officer Box said that he thought that “it [was] a major shootout,” with two suspects shooting at “however many policemen were there.” Officer Box exited the car with a shotgun and ran up to cruiser CPD 217. He said he saw bullet holes in the windshield of the cruiser. He moved up the side of the cruiser and could, in his words, “. . . [felt] a bullet go past me.”

Something hit Officer Box in the vest. He felt it, but thought it might be a ricochet because it was not strong enough to knock him down. He told investigators that this increased his anxiety. After moving toward the front of cruiser CPD 217, Officer Box said he remembers trying to work the shotgun and the next thing he knew, he was standing in front of cruiser CPD 217 with no cover, next to the subject vehicle. He said he knew he fired one round, maybe two, at the subjects. It was later determined that he had fired only once.

As Detective Michael Rinkus entered the parking lot of Heritage Middle School, he said it looked like other officers were chasing the suspect vehicle around in circles and then someone yelled, "Shots fired." The subject vehicle reportedly started coming back toward Detective Rinkus and his partner. Rinkus said that he drove over an island and came back around through a playground median and back onto the street, eventually coming to a stop. He said that the cars were stopped and that it looked like they had blocked in the suspect vehicle.

Rinkus got out of his car and said that there were bullets flying all around him. He said that he "returned fire" and ran for cover. He believed he saw an officer fall, saying he thought that the officer had been shot. By the time he got to the sidewalk, Detective Rinkus was out of rounds. Upon his weapon being inventoried, it was learned that he had fired 13 rounds.

Detective Michael Demchak and his partner, Detective Erin O'Donnell, stated they heard shots being fired as they pulled up to the scene at the middle school. During the chase, Detective Demchak said that he heard on radio transmissions, "They got a gun. Looks like they're pointing a gun out the window. Looks like they're . . . reloading their guns, trying to reload a gun or something." He also said that he heard a radio transmission saying, "Shots fired. Shots fired. They're shooting at us."

He also remembers Officer Fairchild's radio transmission about a pop can. He said that the pop can radio traffic made him think about "questioning what the agenda was here. They're taking the time to drink a pop?" He remarked to investigators that he was considering the "totality of everything. . . . They shot at the police, [ran] from the police, [were] especially being casual, drinking pop."

Detective Demchak also said that, in his mind, he believed the suspects were wearing bullet proof vests because the gunfight was apparently lasting so long. As

he was exiting the car, he said he was thinking, "These were some bad people who need [to be] stopped."

Detective Demchak came out from his car and moved to the rear of cruiser CPD 238. As he was doing this, he saw two officers on the driver's side of the subject vehicle, firing into it. Seeing the officers dealing with the driver side threat, he said he fired four times at the driver's area of the subject vehicle. As Demchak was approaching the car, he saw an officer "scrambling" around. He said that this led him to believe that shots were coming down the passenger side of cruiser CPD 238. The officer was ducked down as low as the trunk lid as he circled around the car right in front of Demchak. He said this gave him the impression that the officer was taking fire. As Detective Demchak got to the car, he said he thought to himself, "The battle was on. These guys were shooting it out. And this had to come to an end."

Detective O'Donnell said that as she and Detective Demchak entered the school parking lot, she heard a couple of shots and heard at least one person, possibly two different people, say, "They're shooting at us." While she and Demchak were exiting their car, O'Donnell said that they heard more gunshots. She went to the driver's side front door of cruiser CPD 238 and said that she had a clear shot to the passenger side of the subject vehicle. She then took cover by cruiser CPD 238 because someone was alerting to crossfire.

Detective O'Donnell said she looked to the subject vehicle as she began hearing numerous shots, observing that the driver and passenger were moving. She stated that she thought the driver was shooting, and it looked like the passenger was reloading. She drew her weapon and checked her target and beyond, firing several rounds into the passenger's window. O'Donnell said that she originally thought she only fired five to seven times, but later learned, based on an inventory of her weapon, that she had shot 12 times.

Detective Christopher Ereg said that while he was driving on the access road behind the school parking lot, he heard the subject vehicle strike a police cruiser. He told investigators that he thought he heard someone on the radio say, "Block them in."

While still moving, Detective Ereg said he heard rounds being fired. He exited his car, stating that he feared crossfire. He said that someone was on the radio saying, "They're shooting at us or shooting at officers." He also said that he heard someone yell, "They're shooting!"

As Detective Ereg moved down the hill from his car, he said he saw two officers down and believed that they had been shot. As he approached the subject vehicle, he said that rounds were still being fired and that he believed that officers were taking fire. Ereg said that he saw “glass from the suspect vehicle exploding. I thought they were shooting through the window. And I saw bullet holes in the police car, over here. I thought these officers [the occupants of cruiser CPD 217] were taking fire.”

Detective Ereg said that he observed the passenger in the subject vehicle moving forward and that he thought the action was the subject “. . . loading his gun.” He said he then took aim at the passenger and discharged his firearm. He thought he had fired four times, but later learned, based upon an inventory of his weapon, that he had fired six shots.

With the exclusion of Officer Diaz’s initial shots on the grass island, a waveform analysis on the audio recordings determined that the first discernible round of gunfire lasted approximately 8.5 seconds, followed by a 1.3 second pause. One additional shot was fired, followed by a 2.4 second pause. The final round of gunfire lasted 5.1 seconds. The total duration of audible gunfire from first shot to last (excluding shots from Officer Diaz) was 17.8 seconds.⁷

To summarize, investigators determined that 13 officers discharged their weapons. Each of these officers stated that they felt -- at the time -- that they had no other choice than to discharge their firearms because they believed there to be an imminent threat to their safety and the safety of other officers.

Additionally, all other officers from the scene who did not fire their weapons stated that they, too, felt deadly force was justified (There were varying reasons for not firing, such as not being in a position to fire or recognizing the crossfire situation.).

The temperament of the officers on scene after the shooting was quiet and somber, with most officers appearing to be in a state of shock.⁸ Officers were checking themselves and others for injuries, as well as examining their vests for any potential bullet impacts.

⁷ The waveform analysis was conducted by Megan Timlin of the Ohio Attorney General’s, Organized Crime Investigations Commission.

⁸ This assessment can be attributed to statements from all the police officers who fired a weapon. In particular, it is documented in the investigator interview of Detective Michael Demchak on December 5, 2012.

In trying to determine if the decedents had a gun, investigators searched the interior of the subject vehicle, the access drive, the staff parking lot, and the surrounding lawn areas at Heritage Middle School. The areas on either side of the subject vehicle's travel route, within a reasonable distance of where a gun could have been thrown, were systematically searched visually and with the aid of a metal detector (in higher grass areas). The interior of the car was not searched on-scene. Rather, it was first transported on a flat-bed tow truck to the Cuyahoga County Medical Examiner's Office where the decedents were removed and the vehicle searched (by employees of the Medical Examiner's Office).

The vehicle was then transported to the vehicle investigation garage at the BCI Richfield Regional Office where BCI special agents conducted a more thorough search and examination, including the removal of the vehicle's seats. No weapon was located, nor was any cartridge casing that didn't match any of the officers' weapons.

The Cleveland Police Department conducted searches along portions of the pursuit route, including around the Justice Center and I-90, near "Dead Man's Curve." The investigative team did not duplicate those searches. However, they conducted a physical search along sparsely inhabited portions of the pursuit route, such as the Steel Yard Commons area, where a firearm could have been discarded without having been readily located. This included portions of Clark Avenue, Quigley Road, and West 14th Street (area of the roundabout). No weapon was located.

The statements of pursuing officers and radio traffic regarding where a weapon was purported to have been observed contributed to the narrowing of the search area. Investigators conducted a line-search on both sides of the street, including a visual examination into storm drains. The search extended to the sides of the roadway as far as a weapon could have reasonably been thrown. This distance varied depending upon the terrain and presence of natural or man-made barriers, such as hillsides and fences. No weapon was located.

Additionally, the Cuyahoga County Sheriff's Office Dive Team searched some of the waterways along the route where evidence potentially could have been thrown from the subject vehicle. This included a search of the water inlet at the Illuminating Company power plant on S. Marginal Road and the waterway east of Martin Luther King Jr. Drive at Wade Park. It also included a visual search at the northern section of lower W. 3rd Street, along the Cuyahoga River. No weapon was located.

Investigators also reviewed numerous surveillance videos, traffic cameras, and dash cam videos for any photographic evidence of a weapon being possessed or brandished by the vehicle's occupants. None of these video examinations resulted in the observation of a weapon.

Let me now discuss the issue of gunshot residue. Investigators collected gunshot residue test kits from the hands of both decedents, as well as from the interior of the subject vehicle above the side-front and side-rear windows (headliners). Particles highly indicative of gunshot primer residue were found on the hands of Timothy Russell. Particles highly indicative of gunshot primer residue were found on the hands of Malissa Williams. And, particles highly indicative of gunshot primer residue were found within the interior of the subject vehicle.

This result is consistent with both decedents firing a gun, but equally consistent with both decedents not firing a gun. Because shots were being directed into their vehicle at very close range, the findings of gunshot residue in these locations would be expected whether or not each person in the car was firing a gun. So in other words, the gunshot residue testing revealed nothing in regard to whether or not the subjects had a gun.

The toxicology report, conducted as part of the autopsy, indicates that Timothy Russell had a blood alcohol level of .131 grams per deciliter. He also tested positive for cocaine and nicotine. The toxicology report indicates that Malissa Williams was also positive for cocaine, as well as Cannabinoids (marijuana) and nicotine. This report indicates that it is likely that both decedents had recently (within six hours of the pursuit and shooting) consumed cocaine. Additionally, the toxicology analysis found that the cocaine was likely in the form of crack cocaine, and it appeared that Malissa Williams had been "binge" smoking the crack (taking repeated hits to regain the high).⁹ Upon searching the subject vehicle, investigators located a crack pipe.

I now would like to turn to the police department's own rules regarding pursuits.

POLICIES/PROCEDURES

I commend Mayor Jackson and Chief McGrath for conducting an internal review of these tragic events. This is an important step, and I would like to discuss some

⁹ See autopsy report from the Cuyahoga County Medical Examiner's Office. Pathologist Andrea L. Wiens, D.O., completed Timothy Russell's examination on December 1, 2012. Pathologist Joseph A. Felo, D.O., completed Malissa Williams' examination also on December 1, 2012.

issues that I believe any internal review needs to cover. But, before going into specific policy violations, I think it is important to understand how the radio transmission network is set up, as it contributes to some of the communication failures.

The Cleveland Police Department utilizes a central dispatch center with each district's patrol unit having a separate radio channel (and other specialized channels within each district). Further, each patrol district has a separate dispatcher assigned to monitor and communicate on that district's channel. The dispatchers for each of the districts are physically located in the same room, utilizing separate work stations. The dispatchers are able to speak to one another around and over the cubicles in order to pass along information without using the radio system to do so.

Although the ability to link various channels together during an incident spanning across multiple districts theoretically exists, problems with doing so have led to a policy prohibiting it. Therefore, it is the understanding of the investigators that when a cross-district pursuit occurs, involved officers are to switch to the radio channel of the district where the incident originated. The originating district's dispatcher then handles the communications for the incident as the primary radio channel. Because this incident originated in District 2, channel 2 was the primary communications channel. However, information regarding the incident physically relayed from dispatcher to dispatcher in the dispatch center was also rebroadcast over other districts' channels, keeping other officers informed who did not change their radios to channel 2.

Regarding motor vehicle pursuits, the Ohio Revised Code requires each police department to adopt a specific policy. Further, the chief of police is required to formally advise each peace officer of the pursuit policy adopted by that agency. The Cleveland Police Department has such a policy. It was effective March 1, 2002, and revised August 5, 2010.

I would like now to examine this policy as events actually happened on November 29, 2012.

First, according to this policy, "*Officers shall not: Join a pursuit in progress without permission from a sector supervisor (Acknowledgement from the Central Communications System of an officer's intent to join a pursuit shall not constitute permission to join a pursuit.)*." In reality, 59 of the vehicles in the pursuit never asked permission to join the chase. Our investigators found that the sector

supervisor during the pursuit, Sergeant Randolph Dailey, stated that based on radio traffic he was monitoring, he was aware of only the initial three police vehicles participating in the pursuit (Cleveland Police Department vehicles driven by Officer Nan, Sergeant Patricia Coleman, and Officer Hummel). All other pursuit participants joined without receiving permission.

While the policy states that any other vehicle that wants to join the pursuit must ask the supervisor for permission, there was no other radio traffic requesting permission, and sector supervisor Dailey said that no other vehicle asked to join. He said in spite of stated policy, it was not unusual for vehicles to join in and, it was “an accepted viewpoint” that if an officer is asking for help, officers are “going to head that way.”

Second, the policy states: “*Pursuing officers shall: Immediately switch to the main communication channel of the district of occurrence if operating on another channel.*” Supervisors who told officers to stop pursuing communicated this on their own district's radio channel, while officers involved in the pursuit said they had switched over to the radio channel of the district in which the pursuit began. Therefore, those officers who were told to stop did not necessarily hear those commands from supervisors.

Third, the policy states: “*The sector supervisor shall: Permit no more than two police vehicles to directly engage in a pursuit, except under unusual and well-articulated circumstances.*” Based on the radio traffic he was monitoring, sector supervisor Dailey was aware of only the initial three police vehicles involved in the pursuit, which included a vehicle driven by Sergeant Coleman, whose discretion and judgment he trusted. It is clear that others failed to follow the policy, since 62 marked and unmarked police vehicles from multiple jurisdictions (Cleveland Police Department being the majority) engaged in the pursuit.

At the same time, though, sector supervisor Dailey could not be heard coordinating or actively monitoring the pursuit. He stated that based on the information he had, he believed they had “a mobile active shooter.” In that kind of situation, he said he would not send just two to three cars, but could not determine how many cars would be enough. He did, however, think that 60 were too many.

Fourth, Cleveland Police Department General Police Order 3.2.07 regarding emergency response driving states: “*Supervisors shall monitor communications and shall disregard back-up cars that are responding to an emergency assignment when it has been determined that the situation is under control and the back-up*

cars are not needed.” Here, without anyone assuming overall control, there is no way for this policy to be followed. During the pursuit, multiple supervisors were within the pursuit and did not exert any authority or relay updates to the Central Communications System, nor did they communicate to the sector supervisor the number of vehicles involved in the pursuit (Several other supervisors prohibited their officers from participating in the chase.). Further, many officers responded to the final scene once they heard that shots were fired (responding to a shooting, not to the pursuit).

The few officers who were told to stop, but didn't, said they were on the pursuit's radio channel, while the order to cease was on their original channel, which they didn't hear. Sergeant Coleman, who was within the pursuit, did not broadcast any instructions on the radio until the pursuit had ended, informing officers to be aware that shots had been fired. At no time did anyone on the radio remind officers to ensure proper “backstopping” if gunfire did occur, or avoid crossfire, or avoid spontaneous shooting.

The Cleveland Police Department has started to take measures to ensure its policies regarding vehicle pursuits and use of force align with national best practices and standards in the profession. The Department is in the process of working with the Police Executive Research Forum in reviewing certain department policies to see which ones may need to be updated. In addition, Mayor Jackson and Chief McGrath have announced that the Cleveland Police Department will seek, in an effort to provide transparency, an outside administrative review for any future use of force cases involving its officers.

CONCLUSION

What you have just heard is a tragedy -- a tragedy for Timothy Russell, a tragedy for Malissa Williams, and a tragedy for their families. This has also been very tough for each of the law enforcement officers involved.

To state the obvious, this chase could have ended without tragic results if Timothy Russell had simply stopped the car in response to the police pursuit. Perhaps the alcohol and the cocaine in his system impaired his judgment. We will never know.

We do know that each officer at the scene believed he or she was dealing with a driver who had fled law enforcement. They each also believed they were dealing with a passenger who was brandishing a gun -- and that the gun had been fired at a police officer. It is now clear that those last two beliefs were likely not true.

Our two-month investigation reveals that we are dealing with a systemic failure in the Cleveland Police Department. Command failed. Communications failed. The system failed. For example:

- Cleveland Police Department policy states that no more than two police vehicles can participate directly in a pursuit except under unusual and well-articulated circumstances. In this situation, at least 59 vehicles were involved without the sector supervisor's knowledge or permission.
- While Cleveland Police Department policy requires pursuing officers to switch their radios to the main communication channel of the district in which the pursuit originated, some of the pursuing officers did not do so. Because details of the pursuit were being transmitted on multiple radio frequencies, there was confusion as to which frequency was primary.
- Orders to discontinue the pursuit were not heard by some officers because they were transmitted on a channel they were no longer monitoring.
- When the first officer conducted the initial traffic stop and brief pursuit of the suspects, he failed to communicate that to dispatch.
- Officers who believed that the vehicle may have back-fired failed to radio their belief during the pursuit.
- When the pursuing officers requested spike strips to stop the suspect's vehicle, they were told by a supervisor, "That's negative. I think our last set broke about three years ago."
- When pursuing officers requested aviation support, they were advised by dispatch, "No chopper."
- The sector supervisor was uninformed of some of what was occurring and did not actively seek information.
- Supervisors actively involved in the pursuit failed to communicate details to the sector supervisor.

- Lack of sector supervisor command and warnings (such as warnings prior to the shooting to be aware of backstopping and crossfire if a shooting occurred) resulted in an overall failure to control the situation
- The large number of vehicles involved contributed to a crossfire situation at the pursuit's termination that risked the lives of many officers. It is, quite frankly, a miracle that no law enforcement officer was killed.

Clearly, officers misinterpreted facts.

They failed to follow established rules.

However, by failing to provide the adequate and necessary structure and support, the system, itself, failed the officers.

Police officers have a very difficult job. They must make life and death decisions in a split second based on whatever information they have in that moment. In a situation like this, they are under tremendous stress. But, when you have an emergency, like what happened that night, the system has to be strong enough to override subjective decisions made by individuals who are under that extreme stress.

Policy, training, communications, and command have to be so strong and so ingrained to prevent subjective judgment from spiraling out of control. The system has to take over and put on the brakes.

On November 29, 2012, the system failed everyone.