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State of California
DEPARTMENT OF JUSTICE



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December 10, 2007

Rodney K. Mitchell, Sheriff
Lake County Sheriff's Department
1220 Martin Street
Lakeport, CA 95453

Re: Clearlake Fatal Boating Accident - Investigative Review

Dear Sheriff Mitchell:

Earlier this year you requested the Department of Justice (DOJ), Division of Law Enforcement, conduct an investigative review of an investigation completed in April/May 2006, by your agency, with the assistance from the Sacramento County Sheriff's Department. It involved a boating accident, which caused one fatality and several minor injuries to parties on both vessels. You requested the DOJ conduct an evaluation using documents prepared by your deputies and those of the Sacramento County Sheriff's Department. We have completed our review utilizing the documents listed, as well as other documents provided by the DOJ Crime Lab, the Sacramento County Coroner's Office, and local hospital records.

This letter is to inform you that we did not find any areas requiring further investigation, or a need for policy enhancement based on the information you provided. Enclosed you will find a copy of our report for your files.

Please feel free to contact me if you have any questions regarding this report or its findings. We are glad to have been of service to you and your agency.

Sincerely,

A handwritten signature in black ink, appearing to read "George B. Anderson".

GEORGE B. ANDERSON, Director
Division of Law Enforcement

For EDMUND G. BROWN JR.
Attorney General

Enclosure

Investigative Review
Lake County Sheriff's Department
Clearlake Fatal Boating Accident

Executive Summary

On the evening of April 29, 2006, shortly after 2100 hours, a group of five adults were riding in a 27-foot sailboat in the Konocti Bay area of Clearlake, California. The boat was owned by one of the occupants, Mark Weber, and being piloted his associate, Bismark Dinius. They were traveling at a slow speed under sail power, heading on a southerly course. All of the occupants admitted later to consuming various amounts of alcoholic beverages during the trip. Blood samples taken from Dinius and Weber, and tested by the California Department of Justice (DOJ) Crime Laboratory, would later show both were legally under the influence of alcohol. Subsequent examination of forensic and physical evidence, as well as eyewitness statements, would show that their vessel was crossing the lake without illuminating its running lights.

Nearby, two adults and one female juvenile were riding in a 24-foot powerboat. The vessel was displaying its running lights according to the driver and numerous eyewitnesses. The boat's owner, Russell Perdock, was the driver. Subsequent blood alcohol tests performed by the California Department of Justice showed he had no alcohol in his system. He was currently the Chief Deputy of the Lake County Sheriff's Department. According to Perdock and other eyewitnesses familiar with boating in this area, he was traveling at approximately 40-45 miles per hour on an angled, but ultimately converging course with the sailboat. When Perdock's powerboat overtook the sailboat from the right rear, striking it near the starboard stern, it went over the sailboat and was briefly airborne. As it coursed over the sailboat, significant damage was inflicted on both vessels. Tragically, Lynn Thornton, one of the sailboat passengers, was struck by debris from the collision and sustained injuries that would cause death shortly thereafter, by blunt force trauma. Other parties in both boats sustained minor injuries, and were treated and released at local hospitals.

The first 911 calls received by the Lake County Sheriff's Department were from Chief Deputy Perdock, who was trying to get medical attention for all parties to the accident. Perdock made several calls to direct EMS and Sheriff's deputies to the scene. Soon after the incident, boaters who were in the area towed both boats to the nearest docking facility, and rendered first aid to those injured until medical personal could take over on shore.

An immediate investigation was undertaken by the Lake County Sheriff's Department, which, included towing and impounding both of the vessels, interviews of all parties involved, as well as eyewitnesses who saw the incident from a variety of positions. Additionally, medical care was being rendered at two area hospitals for those injured. Blood samples were taken at the request

of the investigating officers from Weber, Dinius, and Perdock for blood alcohol testing. Extensive digital photography work-ups were done on both vessels to document their condition and aid in accident reconstruction. Physical evidence was seized.

Early on in the investigation, Sheriff Mitchell determined that because his Chief Deputy was involved in the accident, he should bring in an outside agency. He requested and received assistance from the Sacramento County Sheriff's Department. A supervisor and deputy from the Marine unit with investigative experience in maritime operations and safety, took over the technical and accident reconstruction aspects of the investigation.

Because the involvement of a member of the Sheriff's administration generated a high level of public and media interest, Sheriff Mitchell requested and received an additional external review of the investigation conducted by his deputies, and those of the Sacramento County Sheriff's Department. An examination of the investigation and findings are included in the following pages.

In summary, the findings of this review are as follows:

- The initial rescue, EMS response, and law enforcement handling of the parties involved was accomplished according to standard law enforcement practice.
- The handling of evidence from both vessels and forensic evidence in the form of blood alcohol samples from the responsible parties from both vessels were consistent and within normal investigative practice.
- The request for a third party investigation by an outside agency, such as the Sacramento County Sheriff's Department, was prudent given the involvement of the Lake County Sheriff's Chief Deputy, even though he was off duty at the time of the incident.
- The investigative reports, dispatch records, scene photography, and medical records portray a consistent chronology of events with few minor exceptions where date/time errors were made on three medical forms. They are addressed and in the body of this document, and are insignificant to the outcome of this review.
- From the examination of the documentation provided by the Lake County Sheriff's Department, there were no areas for further investigation or policy change noted.

Methodology

The Department of Justice investigative review was conducted at the request of Lake County Sheriff Rodney Mitchell. Its scope and methodology was largely determined by the Sheriff's letter, in which he asked for a review of the sufficiency of the investigation, areas for further investigation, and changes or enhancements to department policies. It was *not* the goal of this review to re-investigate this incident. Hence, this review relied expressly on written records and digital imagery generated by the Lake County and Sacramento County Sheriff's Departments, local hospital records and analysis records of the Department of Justice, Bureau of Forensic Services. Last, an informational interview of Sheriff Mitchell was conducted. The chronology that follows will in more detail, describe the incident and where appropriate, make findings and/or recommendations pertinent to the Sheriff's request.

Chronology of the Incident

On April 29, 2006, at 21:18:22 hours, the Lake County Sheriff's Department dispatch center received a cell phone call from Chief Deputy Russell Perdock. He informed the dispatcher he had just struck an unlit sailboat in the Konocti Bay area of Clearlake, and requested rescue and another boat. He also informed dispatch that he had injured persons on the boats. This was the first notification to authorities of the incident. Over the course of the next few minutes, Perdock made four additional cell phone calls in an attempt to direct the rescue response of deputies and EMS, and inform dispatch of the condition of the injured on both vessels. Two citizen calls were also received, reporting a loud crash on the lake and requesting an ambulance.

Three ambulances and numerous Sheriff's department deputies responded to the Bay Shore area of Clear Lake, and provided medical and law enforcement services to the parties involved. The subsequent investigation which began along with the rescue effort, was documented by investigative reports, photographs, medical records, and dispatch log entries. These sources were closely examined and provide the following additional information for this chronology. The chronology does not, however, contain all of the data contained in each report unless it serves the conduct of this review.

On April 29, 2006, shortly after 2100 hours, a 27-foot sailboat occupied by five adults were taking in a pleasure cruise in the Konocti Harbor area of Clearlake. The five are identified as Mark Weber (vessel owner), Bismark Dinius (boat pilot), Lynn Thornton, Henry Dominguez, and Zina Dotti (Passengers). Each person, with the exception of Thornton (who could not be interviewed due to her medical condition) admitted to ingesting alcohol in varying amounts during the evening hours. Dinius told the investigating deputies that no alcohol was aboard the sailboat, however, several partially consumed bottles of alcohol were located during a search after the vehicles were impounded. The vessel was traveling at a slow rate of speed under sail on a southerly course. The weather was calm and clear, but it was completely dark. All parties on the vessel were seated in the open cockpit area near the stern. Weber stated that the vessel was at all times under the control of Dinius.

Weber stated during his initial interview, that it was still light when he departed on the cruise, but he checked and turned on his running lights and they remained on for the duration of the cruise. It was noted in a later interview documented by Lake County Sheriff's Department report that Weber admitted that his mast light was not working at the time of the collision. However, the bow, stern, and mast lights were collected by deputies and sent to the California Department of Justice, Bureau of Forensics Laboratory. The Laboratory examined the lights and found that the stern light was not on at the time of the collision.

The condition of the mast and bow lights could not be determined.

Nearby, the sailboats position on the lake, a 24-foot powerboat owned and piloted by Lake County Sheriff's Chief Deputy Russell Perdock, and also occupied by his friend James Walker and his daughter, Jordan Walker, were on a similar outing. All were standing in the front cab area of the open powerboat as it traversed the lake in a southerly course at approximately 40 miles per hour. Perdock and his passengers both remembered that the bow running lights on the powerboat were illuminated during the trip. The three occupants said there was no indication or lights from another boat, to warn them of an impending collision until just before they struck Weber's sailboat. At that time, the running lights from the bow of Perdock's boat barely illuminated the sailboat, but according to Perdock, it was too late to avoid the collision. Perdock's powerboat overtook the slow moving sailboat from the rear starboard on a 15-degree intercepting course, and struck it near the stern. Perdock's boat went up and over the sailboat during the collision, and was briefly airborne before coming to rest in the water on the port side of the sailboat.

Immediately after the accident, Perdock attempted to maneuver his boat back to the sail boat, but his engine seized and could not be re-started. He then made the above noted four cell phone calls to the Lake County Sheriff's dispatch center and requested rescue personnel and boats. A rescue effort immediately began by the Sheriff's Department and EMS personnel. Before they arrived, however, boats from several locations on the lake converged on the scene of the collision and assisted in towing both boats to shore, where they were met by deputies and EMS personnel.

As a result of the collision, Thornton, who was seated on the starboard side of the boat, was struck with debris from one or both vessels and was mortally wounded. Although she received first aid and CPR at the time of the accident, later by paramedics and ER personnel at two different hospitals, she succumbed to her injuries and died of blunt force trauma at the UC Davis Medical Center in Sacramento the following day. An autopsy was performed on her body by the Sacramento County Coroner's Office, and in his report of investigation, the Coroner also listed the cause of death as blunt force trauma.

Perdock, during his interview after the incident, admitted to having one-half of a beer during the late afternoon. He also stated that he was the sole person in control of the powerboat during the entire trip, and was driving when the accident occurred.

Shortly thereafter, persons requiring care from both boats were transported to two hospitals in the Clearlake area. With the exception of Ms. Thornton, all were treated and released after treatment for a variety of minor injuries. It should be noted that a blood sample was obtained from Dinius and Weber at the direction of Deputy Hoffman, since initially there was some confusion as to who was piloting the sailboat. As well, a blood sample was taken from Perdock and provided to Sergeant Beland, who had driven Perdock to Redbud Hospital for medical treatment at approximately 2330 hours.

An examination of the medical forms required for the blood draw at both hospitals showed errors in the time/date entries on all three hospital forms. For example, the "Request for Blood Draw" form for Dinius shows the deputies request was made on April 29, 2006, at 0002 hours and consented to by Dinius on April 30, 2006, at 0005 hours, or 24 hours and three minutes later. The same form completed for Weber shows that the request was made at 2315 hours, and consented by Weber at 2313 hour, or two minutes before it was made. Perdock's form shows the blood draw was done on April 30, 2006, at 2330 hours. However, an examination of several of the investigative reports, hospital treatment records, and dispatch records indicate the blood samples from Dinius, Weber, and Perdock were taken as soon after the accident as practical, given the travel time from the Bay Shore area where the victims came ashore to the hospitals. It appears that the samples were drawn within a few minutes of each other and stored properly at the Sheriff's evidence storage facility. It is likely that the mistakes on the forms were due to fatigue, or carelessness of staff members in the last few minutes of the calendar day.

The blood samples taken from all three were collected and stored in the Sheriff's evidence locker on April 30, 2006, at 1345 by Deputy Pfann. They were later taken to the Bureau of Forensic Services Crime Lab in Santa Rosa on May 1, 2006. A subsequent analysis of the three samples showed that Russell Perdock had a blood alcohol level of 0.00 percent. Mark Weber had a blood alcohol level of 0.18 percent, and Bismark Dinius had a blood alcohol level of 0.12 percent.

Video interviews of Zina Dotti and Henry Dominguez were conducted just after they arrived on shore from being towed in to the harbor. Dinius and Weber were interviewed at Sutter-Lakeside Hospital, while Perdock was interviewed at Redbud Hospital. Both Walkers were interviewed via telephone from their residence on May 4, 2006, since they were treated and released from the hospital before deputies could conduct their interviews.

While injured parties were being treated and interviewed, the Sheriff's Department had both vessels towed and impounded to preserve any evidence on board, which would assist in the accident reconstruction. In addition, Sergeant Ostini took numerous digital photographs of both vessels to preserve their appearance as evidence. The photographs were properly logged into the investigative report as evidence.

On May 1, 2006, Sheriff Mitchell, due to the off duty involvement of Perdock, his Chief Deputy, requested that the accident investigation be conducted by an outside agency. He asked for and received investigative support from the Sacramento County Sheriff's Department. The

department sent Sergeant Slaybaugh and Deputy Haymart who have expertise and experience in marine safety and operations, to conduct the remainder of the accident investigation.

On May 1, 2006, Slaybaugh and Haymart responded to the Lake County Sheriff's Department and conducted the remainder of the accident investigation. This included a detailed assessment of the damage to both vessels, a review of all evidence seized prior to their involvement and an accident reconstruction using data from reports, witness statements from nearby fishermen, a retired East Bay Parks officer, maps, and digital photographs. In addition, they performed an on site re-enactment of the speed/course of the boats to verify the statements of eyewitnesses and involved parties.

The investigative efforts of Sergeant Slaybaugh and Deputy Haymart were recorded in extraordinary detail in their investigative report. In summary, they found that:

- Based on witness statements and occupants of both vessels, both were headed in a generally southeast direction at the time of the collision.
- The estimated speed of Perdock's boat was 40 miles per hour based on his own statement, observations of eyewitnesses, and the investigators calculations using a nautical slide rule.
- Statements of eyewitnesses and the occupants of Perdock's boat, indicated that the sailboat was operating without running lights. In addition, an examination of the switch panel in the sailboat showed that switches for the bow and stern lights were in the off position.
- As Perdock's boat converged with the sailboat, it impacted at 40 miles per hour with a fifteen degree closure rate, causing extensive damage to the starboard stern area.
- Witness statements placed Lynn Thornton on the starboard side of the vessel at the time of the collision.
- As Perdock's boat crossed over the top of sailboat causing further damage the propeller of his boat became fouled in the rigging lines of the sailboat.

In light of their findings they concluded that:

- Dinius was operating the sailboat (V1) while under the influence of alcohol.
- Had V-1 displayed proper navigation lights, the collision may have been avoided.

- Had V-1 maintained a proper lookout and observed V-2 (the powerboat) approaching from the stern, the sails could have been illuminated to identify its position in the water.
- Had V-2 (Perdocks boat) reduced its speed in accordance with the limitations of visibility, the collision may have been avoided.

In addition, the report recommended that the Lake County District Attorney review the case reports to consider the prosecution of Bismark Dinius for PC 192.5 (Vehicular Manslaughter involving a vessel), and Harbors and Navigation Code 655 (Reckless and Negligent Operation- Operating a vessel under the influence of alcohol involving injury or death). He also recommended consideration be given to prosecuting Mark Weber for PC 192 (Manslaughter).

Conclusions

As stated earlier in the Methodology section of this report, the intent of this review was not to re-investigate the accidental collision of the two vessels and the subsequent death of Thornton. The finding of facts and the decision to prosecute person(s) involved was made previous to this review at the local level as is appropriate. Rather, the issue herein was to determine, by means of the information provided by the Lake County Sheriff's Department, whether the investigation was sufficient, required further investigation, and whether any departmental policies needed enhancement.

This review covered a detailed examination of 18 Lake County Sheriff's Department reports, one Sacramento County Sheriff's Report, a Sacramento County Coroner's Report, Lake County Dispatch logs, and DOJ Bureau of Forensic Services evidence and toxicology reports. The investigative reports appeared to be accurate. When numbered supplemental reports were prepared by different authors, there appeared to be a logical progression of the investigative effort. Importantly, there were no discernable conflicts, or differences between the independent efforts of the Sacramento County Sheriff's Department and the Lake County Sheriff's Department as they investigated this case.

In particular, evidence seizure, processing and storage using the DOJ Crime Lab system was done pursuant to standard procedure. Clear chain of custody was delineated in the documents reviewed for both the blood alcohol samples, and the sailboat mast, stern, and bow lights. The seizure and storage of the vessels was documented, and served a useful purpose in aiding the subsequent accident reconstruction. The reconstruction was exceptionally detailed and documented through the Sacramento County Sheriff's Investigative Report and extensive digital photography. Each witness who came forward or was identified during the investigation was interviewed, and those interviews documented by report.

Findings

- The initial rescue, EMS response and handling of the parties involved was accomplished according to standard law enforcement practice.
- The handling of evidence from both vessels and forensic evidence in the form of blood alcohol samples from the involved parties was consistent and within standard law enforcement practice.
- The request for a third party investigation by an outside agency such as the Sacramento County Sheriff's Department, was prudent, given the involvement of the Lake County Sheriff's Chief Deputy, even though he was off duty at the time of the accident.
- The investigative reports, dispatch records, scene photography, and medical records portray a consistent chronology of events with few minor exceptions where date/time errors were made on three medical forms. They are addressed in the body of this document and insignificant to the outcome of this review.
- This review finds that the investigation appears complete with the appropriate level of documentation in the form of investigative reports, digital imagery, and physical evidence, as determined utilizing data provided by the Lake County Sheriff's Department.
- This review finds no need for amendment or enhancements to the operation/administrative policies utilized during this investigation.