Synopsis

On Monday, July 10, 2017, at 1:30 P.M., Wisconsin Department of Justice-Division of Criminal Investigation SAC David Klabunde and SA Ray Gibbs met with Milwaukee County District Attorney John Chisholm regarding this incident. Also present was Attorney John Birdsall, who represented the decedent's family. The meeting took place in Chisholm’s office at 821 W. State St., Milwaukee Wisconsin.

During the meeting Chisholm informed the attendees he would not issue charges in this case against the involved officers. Chisholm further advised he would be releasing a letter explaining his decision to not charge later in the week.

Subjects

<table>
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<tr>
<th>Relationship</th>
<th>Name</th>
<th>Bio</th>
<th>DOB</th>
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<tbody>
<tr>
<td>Attorney</td>
<td>Birdsall, John A (Person)</td>
<td>White, Male</td>
<td>---</td>
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<tr>
<td>Deceased</td>
<td>Young, Bruce J. (Person)</td>
<td>41 yr. old, White, Male</td>
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<tr>
<td>Related</td>
<td>C[redacted], B[redacted] (Person)</td>
<td>White, Female</td>
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Attorney Birdsall requested a copy of the DCI inter-active disc/reports, and was told he would receive a copy. Birdsall was informed the decedent's family would also receive a copy of the inter-active disc. Birdsall stated he would inform the family of Chisholm's decision, and the meeting was ended.

On Tuesday, July 11, 2017, at 8:15 A.M., SA Gibbs attempted to contact the decedent's sister, B[...], via telephone at [...]. Gibbs left a message requesting C[...] call him.

On Wednesday, July 12, 2017, at 10:08 A.M., SA Gibbs received a phone call from B[...]. The caller identified herself to Gibbs as S[...] Young, the decedent's mother. She stated she received a call from her daughter B[...], who requested Young call Gibbs regarding this incident. Young advised Gibbs Attorney Birdsall informed the family the DA was not going to issue charges regarding this incident. Gibbs advised Young DCI would send a copy of the inter-active disc to MS. C[...], and it could be distributed to the rest of the family by her. Gibbs also advised Young the disc would contain graphic scene and autopsy photos. Young thanked Gibbs and the call was ended.

On Wednesday, July 12, 2017, DA John Chisholm released his decision to not charge to the public. The letter was nine pages long, and was dated July 12, 2017. SA Gibbs attached a copy of the letter electronically to this report.

This document contains neither recommendations nor conclusions of the Division of Criminal Investigation. It is the property of this Division, and is loaned to your agency. Its contents are not to be distributed outside your agency.
July 12, 2017

ASAC Joel Lee
Bureau of Alcohol Tobacco and Firearms
1100 North Water Street, Suite 1400
Milwaukee, WI 53202

RE: Agent Andrew Elmer's actions in the encounters with Mr. Bruce Young and Young's subsequent death on December 15, 2016, at 3430 West Greenfield Avenue, City of Milwaukee, WI.

Dear ASAC Lee:

On Thursday December 15, 2016, the Wisconsin Department of Justice Division of Criminal Investigation (DCI) was contacted by your office to report that a Mr. Bruce Young (DOB: [redacted]) had died during an ATF operation directed at arresting Mr. Young for possession of illegal weapons and explosives.

Special Agent in Charge David Klabunde supervised the investigation which was led by Special Agent Raymond Gibbs pursuant to Wis. Stat. §175.47. According to the reports from DCI, Mr. Young was the subject of an investigation into illegal firearm possession and the potential manufacture of improvised explosive devices. The ATF was working in conjunction with the Milwaukee Police Department and received assistance from the Milwaukee County Sheriff's Office as well. A court authorized search warrant was obtained to search storage facilities in Washington County and subsequently it was learned from a confidential source that Young was located at a residence in the vicinity of the 3300 block of Branting Avenue on the near south-side of the City of Milwaukee. The CI also indicated that on December 15th, it had seen Young ingesting heroin. In addition it knew Young to have possession of an AR-15 rifle, an H&K .40 caliber pistol, a Sig P226 9mm pistol and a .44 Smith and Wesson revolver (weapons subsequently recovered at the scene of the death). Young was a convicted felon and prohibited from possessing firearms.

The preliminary investigation indicated that when the ATF attempted to arrest Young outside the residence on Branting Street he fled on foot heading north on 34th Street towards Greenfield Avenue. He was holding a pistol to his head and carrying a backpack that he dropped on 34th Street. Young was pursued by numerous state and federal law enforcement officials in tactical gear based on the nature of the investigation and probable cause to arrest. Young was able to escape the initial scene and based on a number of factors was increasing the distance between himself and the pursuing officers. When Young came to the intersection of 34th and Greenfield, Special Agent Elmer, who was in an ATF vehicle, intentionally struck

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SAFETY BLDG., RM. 405, 821 W. STATE STREET, MILWAUKEE, WI 53233-1485
PHONE: 414-278-4646 FAX: 414-223-1955
Young with his vehicle and shortly thereafter Young’s firearm discharged striking him in the head and killing him.

**Statement of ATF SA Elmer**

DCI interviewed Special Agent Elmer regarding the incident. His summarized statement is included in extensive detail as reported by SA Gibbs. I do so because the essence of this investigation is distilled down to what SA Elmer knew at the time of the incident and what his intent was at the time he acted, as supplemented by the evidence recovered in the investigation and the statements of witnesses. Elmer’s statement to SA Gibbs is substantially as follows:

SA Elmer stated that he participated in an operation on December 15th directed at an individual suspected to have explosive devices and bomb making materials in a storage unit in Germantown. The suspect (Young) was also in possession of numerous firearms, and was a convicted felon. According to the information Elmer received the suspect seldom left his residence without a firearm, and was giving away his possessions, to include his dog and his truck. The suspect told people he was going to get revenge on the people who were responsible for his fiancée’s death (it was later learned she had committed suicide in Young’s presence) and that the suspect possibly had terminal cancer. The suspect was also reported to be an illegal drug user. The suspect also stated to people he would shoot it out with police if they attempted to arrest him.

The operation plan detailed a team of ATF Task Force Officers, (TFO) to conduct a search warrant at the suspect's storage unit in Germantown, while ATF Agents simultaneously took observation positions of the suspect’s residence and vehicle in Milwaukee. The Milwaukee
The operations plan further detailed that if the search warrant revealed the suspect had explosives or bomb making materials, the TFOs would advise the SWAT Team in Milwaukee. The ATF observation team would advise the SWAT team when the suspect left the residence, and the SWAT Team would approach the suspect and arrest him before he reached the truck.

Elmer assessed the information he received regarding the suspect and understood why the plan was designed to arrest the suspect outside of the residence based on the following considerations:

1. The suspect had access to firearms and possible explosives, and making an attempt to arrest him inside the residence might cause him to barricade the residence, take the other people living in the residence as hostages, or set off an explosion inside of the residence.
2. Making an attempt to perform a traffic stop on the suspect after he gained access to his truck could cause the suspect to flee, or drive his truck into an area crowded with people, giving him an opportunity to fire weapons at citizens, or detonate the truck, causing numerous casualties.
3. If the suspect was approached and arrested on foot he would only have access to what he could carry in his hands and on his person, and could be more easily approached by numerous officers at one time.

The suspect’s statements about shooting at police if they tried to arrest him, in addition to giving away his possessions and talking about getting revenge on people and possibly having terminal cancer, caused Elmer to have concerns that the suspect had nothing to lose, and as such might act in a manner that showed little regard for his own life, or anyone else’s life.

Elmer drove to the area of W. Branting Ln. and parked on S. 32 St., facing north, just south of Branting Ln. He arrived at approximately 1:00 P.M. Elmer could not see the suspect’s truck, but knew ATF Agents were in a car that was positioned with a view of the truck. Elmer also knew ATF Agents where in the second ATF vehicle that also had a view of the suspect’s truck. Elmer knew these two teams were assigned to block the truck from moving if the suspect managed to gain access to the truck. Elmer’s view of the truck and the other two ATF teams was blocked because he was parked to the east of a hill that crested around S. 33rd St. and W. Branting Ln.

Elmer contacted the observation and blocking teams and informed them of his presence in the area. Both blocking teams sent Elmer pictures of the truck at its current location, so Elmer was aware of the area around the truck. Elmer also was in possession of a map of the area.

Elmer described the area of S.34th and Branting Ln. as densely populated with numerous houses lining the streets. He noted the road conditions were relatively dry and were snow free, and traffic, both pedestrian and foot, was light. The weather was extremely cold, and the sky was clear and sunny, making visibility excellent. Elmer maintained his position and monitored the police radios for any information.

Elmer estimated he was in position for approximately one and a half hours when he heard ATF Agent broadcast over the HIDTA 3 channel that he observed children walking on the sidewalk in the area of 34th and Branting Ln. Elmer felt it was important to stop the suspect and place him into custody quickly to minimize the danger an armed suspect posed to any children or other citizens walking in the area. RAC broadcasted over HIDTA 3 channel that from his position, he could see the suspect’s residence, and would see him if he exited the house. Added he would only be able to monitor the suspect’s movement for a short time before losing sight of him, and instructed to broadcast the suspect’s movements after lost sight of him. answered over HIDTA 3 channel that he would be able to monitor the suspect’s movements and would broadcast them after announced that the suspect left his residence.

Elmer heard the search team at the storage facility in Germantown broadcast over HIDTA 3 channel that the search warrant of the suspect’s storage unit revealed powders, CO2 cartridges, fuses, and other materials used in making improvised explosive devices, (IED). Because of the recovery of bomb making materials...
Agent Andrew Elmer's actions in the encounter with Mr. Bruce Young and Young's subsequent death on December 15, 2016, at 3430 West Greenfield Avenue, City of Milwaukee, WI.

Minutes after broadcast, Elmer heard broadcast on HIDTA 3 channel that he saw the suspect leave his residence. Elmer drove his vehicle west on Branting Ln. to the top of the hill, passing through the intersection of Branting and S. 33rd St., and stopping just west of S.33rd St. He looked to the west from his elevated position and observed the two ATF vehicles assigned to block the suspect's truck on Branting Ln. blocking the truck from the front and rear.

The agents inside of the vehicles exited their cars and took positions of cover by their cars. Elmer could also see an unmarked Milwaukee County Sheriff van on the south side of Branting Ln. approach S. 34th St. The deputies exited the van and took positions of cover on the north and south side of Branting Ln. Elmer knew they were MCSO personnel because they wore their black uniforms with the word "SHERIFF" in gold letters on the front, sides, and back of their vests. He could hear them identify themselves as the police and order someone to stop. Elmer added they yelled this loud enough for him to hear them a block away with his windows closed and the heater fan blowing in his van. Elmer saw the suspect at 34th St. on the south side of Branting. The suspect wore blue jeans, and a black jacket, and had a black duffle bag over his shoulder. The suspect walked in the middle of the street north on 34th St. into the intersection of 34th and Branting. Elmer slowly drove west on Branting toward 34th St. He watched the suspect look back in the direction of the sheriff deputies who were now behind the suspect.

The suspect reached down with his right hand towards his torso, and seconds later brought his right hand up. Elmer saw the suspect now held a handgun in his right hand. The suspect held the gun over his head, then lowered the gun to a position level with his head. The suspect pointed the muzzle of the gun at the right side of his head, and Elmer feared the suspect was going to kill himself. Elmer heard the deputies yelling at the suspect to drop the gun, (Elmer's windows were still closed at the time), and also heard broadcast on HIDTA 3 channel that the suspect had a gun in his right hand, and had the gun to his head. repeated that broadcast at least one time. Seconds after the suspect put the gun muzzle against his head, Elmer saw him drop the duffle bag. He heard someone broadcast on HIDTA 3 the suspect dropped the bag, and heard a second person broadcast on HIDTA 3 that he was going to secure the bag and stay with it. Elmer was concerned that the bag could have an explosive device in it, because of the knowledge from the search team that the suspect's storage unit contained bomb making materials.

Elmer observed the suspect run north on S. 34th St. from Branting Ln., and saw the deputies run after him. It appeared to Elmer the deputies were trying to keep cover between themselves and the suspect as they pursued the suspect, and were on the east and west sidewalks of S. 34th St. as the suspect ran in the middle of the road. Elmer added that he feared for the deputies safety, because the suspect had looked in their direction and armed himself after they announced their presence to him. Elmer feared the suspect could easily
turn and begin firing the handgun at the deputies. Elmer drove to S. 34th St., then turned north on S. 34th from Branting Ln. He then drove north on S. 34th St., and took care to stay behind the deputies as they ran after the suspect. Elmer did not want to cause a crossfire situation by placing his car between the suspect and the deputies, because the deputies would not be able to return fire if the suspect fired his weapon at them while Elmer was between them and the suspect. Elmer also feared for his own safety, because the suspect could easily turn and fire the handgun at Elmer as he drove his vehicle behind the suspect. The suspect was still running north in the middle of S. 34th St., and Elmer hoped the suspect would slip or fall, or get tired and give up. The suspect still had the muzzle of the gun pointed at his head.

Elmer saw no traffic on S. 34th St., other than the suspect and the deputies. He was very aware of how close the houses were to each other on S. 34th St., and was aware that this was a densely populated area. He saw that the suspect was not sprinting away from the deputies, and the deputies were not closing any distance between the suspect and themselves. Elmer described it as, SA Gibbs asked Elmer to elaborate on that description, and Elmer stated the deputies had been chasing the suspect for over a city block, and appeared to Elmer to be getting tired. Elmer added he was familiar with the heavy ballistic vests the deputies were wearing, and knew how hard it was to run while wearing them. Elmer added that the suspect showed no sign of wanting to surrender to the deputies, and showed no intention of dropping the gun. Elmer added the deputies continued to identify themselves and order the suspect to drop the gun the entire time they chased the suspect. Even though the suspect did not appear to be running as fast as he could, he was beginning to pull away and create distance from the deputies, and still held the gun in his right hand.

Elmer activated the emergency red and blue lights and siren of his mini-van approximately mid-block between Branting Ln. and W. Greenfield Ave. Elmer followed the deputies and the suspect, and could see the suspect was approaching Greenfield Ave., which Elmer knew to be a busy street. A deputy slipped in the snow, and Elmer saw snow fly up and saw the deputy cartwheel and fall to the ground. Elmer realized the deputies would not catch the suspect before the suspect reached Greenfield Ave., and feared that if the suspect reached Greenfield Ave he could shoot passing motorists or pedestrians. The suspect was followed by police for two blocks, and never dropped the gun, never shot himself, and never surrendered. The suspect kept distance between himself and the officers who were following him, causing Elmer to wonder if his goal was to reach Greenfield Ave. Elmer decided to stop the suspect by knocking him down with his vehicle.

Elmer was approximately three houses south of Greenfield Ave. when he decided to attempt to stop the suspect by striking him with his van. The suspect was approximately one house south of Greenfield Ave. running in the middle of 34th St. with the gun in his right hand. Elmer carefully accelerated past the deputies toward the suspect. Elmer's intention was to knock the suspect to the ground with his vehicle. His hope was that when the suspect was knocked down by the vehicle he would drop his gun, or at least be on the ground long enough for Elmer and the other officers to catch him and place him in custody.
The suspect reached the south side of the intersection at W. Greenfield on S. 34th St. He slowed to a walk and proceeded north into the intersection, still holding the gun in his right hand with the muzzle to his head. Elmer closed the distance between himself and the suspect, and was at the south side of Greenfield Ave. as the suspect walked into the east bound lane of Greenfield Ave. A car driving east on Greenfield had to veer to avoid striking the suspect. Elmer stopped his vehicle at the intersection of 34th and Greenfield to avoid striking traffic in the east bound lane. A van driving east on Greenfield passed in front of Elmer as he was stopped on 34th, and swerved violently to the north to avoid striking the suspect, who was in the middle of the east bound lane of Greenfield Ave. As the van went north around the suspect and continued east past the suspect, Elmer accelerated his vehicle and drove north into the intersection toward the suspect.

The suspect was in the middle of the intersection when Elmer accelerated toward him. Elmer feared the suspect could turn and fire his weapon at point blank range at Elmer as he approached the suspect, so he tried to close the distance between his vehicle and the suspect as quickly as possible. The suspect still held the gun to his head as Elmer's vehicle made contact with him. Elmer struck the suspect with the driver's side portion of the front end of his vehicle. Elmer quickly applied the break on his vehicle and stopped suddenly. Elmer did not look at his speedometer as this occurred, because he was more concerned about possibly being shot and killed by the suspect as he drove towards him than about his speed. Elmer estimated his speed at the time of impact with the suspect to be approximately ten miles per hour.

When the suspect was struck by Elmer's vehicle, he rolled forward into the westbound lane of Greenfield Ave., away from Elmer's vehicle. At the same time the suspect stopped rolling, he brought his right hand back up to his head, and Elmer saw the suspect's elbow pointed upward. Almost immediately Elmer heard one gunshot, and saw the suspect's arm drop immediately after he heard the shot, falling in front of the suspect's chest. Elmer did not see any muzzle flash from the suspect's gun. The suspect came to rest with his back facing Elmer, and after he heard the gunshot Elmer could no longer see the suspect's hands, because the suspect's arms were in front of the suspect, and hidden by his torso. Elmer could see the suspect's torso, but added his view of the suspect's legs was blocked by the front of Elmer's van. Elmer was unsure if the suspect shot himself, and as such, was unsure if he still posed a threat to Elmer, other officers, or civilians in the area. The suspect was lying on the ground a few feet in front of Elmer's vehicle, and Elmer feared the suspect could easily roll toward Elmer and shoot him as he was seated in his vehicle.

Elmer quickly exited the driver's door of his vehicle, drew his pistol from the holster, and pointed it at the suspect. Elmer shouted at the suspect "Police", and shouted commands to the suspect to show Elmer his hands, but the suspect did not respond. Elmer saw the other police personnel approach his vehicle. He saw a stream of blood coming from the suspect's head, and assumed the suspect shot himself when Elmer heard the gunshot earlier. One of the other officers said, "Are we cuffing this guy?", and Elmer assumed they would move toward the suspect to handcuff him.
Elmer had his SRT Medic trauma kit in his van, and was going to retrieve it and begin medical treatment of the suspect when he heard ATF Agent [REDacted] yell "Hold! Hold! Hold" from the passenger side of Elmer's vehicle. [REDacted] yelled "There's something around his neck! Pullback! Pull back!" Elmer looked at the suspect, and saw what appeared to be a halogen light bulb sticking out of the side of the suspect's jacket collar. The top half of the bulb was a different color than the lower half.

Elmer knew ATF Agent [REDacted] had served in the United States Military and had served in Afghanistan. He also knew [REDacted] to be familiar with Improvised Explosive Devices (IED), and added when [REDacted] told everyone to pull back away from the suspect, it was because [REDacted] feared the suspect possibly attached an IED to his person. Fearing a possible explosion if the suspect was disturbed or moved, Elmer and the other agents moved to the south, away from the suspect. When Elmer reached the sidewalk on the south side of Greenfield Ave., one of the other officers asked him if he would move his van away from the suspect and park it in a position to start shutting down the area from any foot or vehicular traffic. Elmer asked one of the SWAT Team members to keep a gun pointed at the suspect while Elmer got into his vehicle and drove it away from the suspect. Elmer was not sure if the suspect was alive or dead, but knew he was still armed, and as such still could roll over and fire at Elmer as he entered his vehicle, or as he drove away in it. Elmer walked toward his vehicle, and entered it from the front passenger door. He did this because the vehicle was pointed in such a manner that the passenger side of the vehicle was on the opposite side of the suspect, and afforded him as much cover from the suspect as Elmer could have. Elmer's vehicle was pointed toward the north/northeast. Elmer slid over to the driver's seat, started his car and backed it away from the suspect. The suspect did not move as Elmer did this.

Elmer drove his vehicle east on Greenfield Ave., and stopped at an alley on the north side of Greenfield Ave., between S. 34th St. and S. 33rd St. He used the vehicle to block any traffic from entering Greenfield Ave. from the alley. He was aware that other officers were also establishing a perimeter in an effort to prevent any cars or foot traffic from getting too close to the suspect. Elmer was still unsure if the suspect booby trapped his body with an IED. While positioned at the alley, Elmer heard on the police radio that the Milwaukee County Bomb Squad was responding to the scene to deal with the suspect.

Elmer stayed in his position at the mouth of the alley for several hours, ensuring that no traffic entered Greenfield Ave. from the alley. He was eventually told to go to the West Milwaukee Police Station to meet agents from DCI, so he drove his vehicle from the mouth of the alley to the West Milwaukee Police Station.

Evidence at Scene/ Medical Examiner's Report

Several videos were recovered during the investigation that provide views of the event at different times. A house security camera on 34th Street shows Young running north bound with a backpack and a pistol that he intermittently places to his head as he looks over his
shoulder at the law enforcement officers in pursuit. Young drops the backpack in front of the residence and continues out of frame to the north. Pursuing officers can be seen trailing to the north. In addition, a citizen with a commercial grade dash-mounted video recorder captured the moment Young enters the intersection heading northbound and disrupting traffic. Moments later Elmer’s vehicle is seen accelerating into the intersection striking Young who goes to the ground and does not rise again. A video from a martial arts studio on Greenfield Avenue was also recovered that captures Elmer’s van striking Young as well as the post-collision response of law enforcement to determine if an improvised explosive device was on Young at the time of the incident. None of the videos definitively shows the moment of Young’s discharge. The dash video (also known as the Fox 6 video) does show a plume of smoke coming from the ground around where Young lands, but it is impossible to discern if the smoke come from a vehicle exhaust or Young’s gun, or both.

Mr. Young’s backpack was recovered and an AR 15 rifle and a .44 caliber pistol were recovered. There was also a light bulb with electrical wires consistent with Agent observation recovered.

After it was determined that the scene was safe, a 9mm Sig pistol was recovered from the vicinity of Young’s body as well as a spent 9mm casing consistent with the unfired ammunition in the Sig. The medical examiner later determined that Young died from a single gunshot wound to the head. Bullet fragments consistent with a 9mm bullet were recovered by the ME and given to the crime lab for testing. There is no way to scientifically or conclusively demonstrate whether Young intentionally or unintentionally discharged the firearm after he was struck by the ATF vehicle.

It is important to highlight that no law enforcement officer discharged a firearm during this incident. The matter is reviewed as an officer involved death because the use of the vehicle to stop Mr. Young was an application of less than lethal force that either coincided with the discharge of Young’s firearm or preceded the discharge.

Numerous witnesses were also interviewed. In particular, S# who was pursuing Young and who believed Young posed a significant threat, observed Mr. Young after he was on the ground raise the gun to his head and then discharge the weapon.

**LEGAL ANALYSIS**

Under Wisconsin law, §938.48 (1) Stats, a person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless
RE: Agent Andrew Elmer’s actions in the encounter with Mr. Bruce Young and Young’s subsequent death on December 15, 2016, at 3430 West Greenfield Avenue, City of Milwaukee, WI.

the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

This is a two-part test, with subjective and objective components.

1) Did the officer have an actual subjective belief that deadly force was necessary to prevent imminent death or great bodily harm to himself or others?

2) Was that belief objectively reasonable?

See State v. Head, 2002 WI 99, 255 Wis. 2d 194, 648 N.W.2d 413.

Generally accepted use of force standards do not allow officers to use deadly force solely to prevent a suicide. However, there are circumstances in which individuals create a dilemma for officers in choosing what level of force is appropriate to terminate a threat of death or great bodily harm, particularly if the suicide is also intended to cause harm to the officer or citizens in the near vicinity.

In this case, the objective evidence shows that Elmer never intended to use deadly force, regardless of the ultimate tragic outcome.

Given all of the circumstances known to Agent Elmer at the time he decided to stop Mr. Young, an objectively reasonable officer in Elmer’s situation could reasonably believe that lethal force was justified. He, however, elected not to use lethal force and instead employed a method that exposed him to greater risk, but also allowed for the possibility of a non-lethal outcome for Young, while also minimizing the risk to civilians and other officers in the area. While a vehicle can certainly be used to deliver lethal force, the evidence does not support that that was Elmer’s intent. He stopped his van at the intersection to avoid oncoming traffic and accelerated only a short distance before contacting Young and then immediately braked when he had decentralized Young. The only reasonable conclusion I can draw from the evidence is that Elmer’s actions were justified and that no view of the evidence would support a criminal charge.

Sincerely yours,

John Chisholm
District Attorney

JC/sks

cc: Chief Deputy District Attorney Kent Lovern