

ATTORNEY GENERAL'S REPORT REGARDING THE DEATH OF MARK KELSO

November 12, 2014

The purpose of this report is to summarize the Attorney General's findings and conclusions regarding the shooting death of Mark Kelso in Canterbury, New Hampshire on February 23, 2014. The findings and conclusions in this report are based on information gathered during a lengthy investigation, including more than twenty interviews conducted by the New Hampshire State Police, autopsy results, examination of physical evidence and the shooting scene, and forensic testing. Based on that information, the investigation reveals that the most likely cause of Mark Kelso's death was an accidental discharge of the firearm he carried on his person.

BACKGROUND

On February 23, 2014, emergency personnel responded to 269 Borough Road, Canterbury for a report of an unresponsive male, who was later identified as Mark Kelso. The initial belief was that Kelso fell and struck his head on the blade of a skidder, a piece of logging equipment, in the driveway where he was located. Emergency personnel rushed Kelso to the Concord Hospital, where it was determined by X-ray that he had metal fragments believed to be bullet fragments in head. Later that evening, Kelso died as a result of his wounds. The next day, the Canterbury Police notified the New Hampshire State Police Major Crime Unit who began an investigation into the circumstances surrounding Kelso's death.

FACTS

a. Witness Statements

i. Peter Fife

On February 23, 2014 at 1:35 p.m., Peter Fife (age 72), called 911 and requested emergency medical assistance at his residence at 269 Borough Road, Canterbury.¹ He reported that Mark Kelso (age 53), was walking between a skidder and truck in his driveway and he fell down and knocked his head. Fife also said that he heard a "crash". When asked, Fife made clear that he did not know what caused Kelso to fall. Fife told the operator that he did not have anything to do with the fall and needed emergency personnel quickly because he is in "serious trouble."²

Emergency medical personnel and members of the Canterbury Police Department responded to 269 Borough Road. Fife told multiple responders in substance that he was inside his house and saw Kelso park his Jeep near the barn and then exit and walk across the driveway towards the skidder. Fife said he heard a "thud" noise and saw Kelso fall

¹ Fife himself has had significant medical issues in the past and sometimes walks with a cane.

² After listening to the audio of the 911 call, investigators believe that Peter Fife was intoxicated when he called 911.

near the skidder. Fife went outside and found Kelso on the ground so he called 911 for help. Fife provided Canterbury officers with a written statement to the same effect.

Fife was subsequently interviewed by Sgt. John Sonia and Sgt. Fred Lulka of the New Hampshire State Police on February 24, 2014 at the Canterbury Police Department. Fife told investigators that he considered Kelso one of his friends and has known Kelso since he was a child. Kelso has been logging on Fife's property for "years." Kelso provided Fife with a portion of the money that he earned from selling the logs from Fife's property.

Fife reported that on February 23, 2014, he was home alone and expecting Kelso to come to his house to continue logging on his property. When Kelso arrived, Fife said that he was inside his house and saw Kelso drive up his driveway and park his Jeep near the barn. Fife told investigators that he saw Kelso get out and walk towards the skidder in the driveway. Fife said he saw Kelso walk between the skidder and a truck and then he heard a "clang" noise. When Kelso walked between the skidder and the truck, Fife told investigators that he lost sight of Kelso. Fife stated he believed he saw Kelso fall down near the skidder, but acknowledged that he actually didn't see Kelso fall to the ground. Fife said he walked outside to check on Kelso and saw blood on the ground and Kelso was gurgling and struggling to breathe. Fife said that he did not touch Kelso and called 911 for immediate help. Fife told investigators that he didn't know what caused Kelso to fall to the ground.

Later during the interview, when confronted with information that Kelso died as a result of a gunshot wound, Fife was initially surprised but admitted that when he went outside he saw a .357 revolver on the ground to the left of Kelso. Fife was aware that the gun was Kelso's as he had shown it to him the day before when he told him that he was concerned about coyotes sneaking up on him when he was logging. Fife also reported that Kelso displayed the gun to him in the past by lifting up his shirt and Fife saw that the gun was in Kelso's waist band. Fife told investigators that he picked up the revolver by the barrel and moved it. Fife led investigators back to his house and showed them the revolver. Fife explained that he moved the gun because he did not want it to be in the way of the emergency responders and "didn't want people falling around over the gun." During the interview, Fife repeatedly told investigators that he did not shoot Mark Kelso.

Peter Fife voluntarily gave the gun to investigators. Inside the gun, investigators found one spent .38 + P Federal casing and five other cartridges, four of which were .357 ammunition and one other .38 + P Federal. The revolver was determined to have a six cartridge capacity.

On March 4, 2014, Sgt, Jeff Ladieu of the New Hampshire State Police attempted to administer a polygraph examination to Fife. During the pre-polygraph interview, Fife was advised of his Miranda rights, which he agreed to waive to speak to investigators. In that interview, Fife maintained that he had nothing to do with Kelso's death. Fife said that he had known Kelso since "he came out of the womb" and told Sgt. Ladieu that Kelso always kept his .357 revolver in his waistband and never holstered it. During the

pre-polygraph interview, investigators became concerned about whether Fife was impaired. Fife was administered a Preliminary Breath Test (“PBT”) and registered a result of .24%. As a result, the polygraph examination was immediately ceased as Fife was unfit to be tested. After being informed of such, Fife was adamant that he wanted the polygraph examination to continue.

On March 11, 2014, with the approval of the Attorney General’s office, in an attempt to obtain statements from Fife, investigators used a one party intercept to secretly record conversations between Raymond Kelso, Mark’s son, and Peter Fife. The conversation took place at Fife’s residence. In the recorded conversation, Fife gave an account that was consistent with what he had told investigators. Fife said that he saw Mark Kelso walk over in between the skidder and the truck which caused him to lose sight of him. Next, Fife heard a “clang” noise. Fife said he went outside and saw Kelso was on his back on the ground in front of the skidder and the revolver was lying on the ground. Fife indicated that he picked up the revolver by the barrel and moved it “to get it out of the way” of the emergency responders. Fife told Ray Kelso that he didn’t tell the investigators initially that he had the gun. In the end, Fife maintained that he did not know what happened to Marl Kelso, and hypothesized that he slipped on the ice and accidentally discharged the gun somehow.

ii. Peter “Joe” Fife Jr.

On February 24, 2014, investigators interviewed Fife’s son Peter “Joe” Fife Jr. Joe reported that he lived next to his father’s residence. He advised that approximately 1:30/2:00 pm on February 23, 2104, he went grocery shopping at the Market Basket in Tilton.³ Joe provided investigators with his receipt from that day which consisted of numerous items and totaled \$113.08.⁴ When asked about what happened, Joe said that his father told him that he was standing by the door and saw Kelso walk in between the truck and the skidder in the driveway and fall down and hit his head. Joe said that Kelso was his father’s best friend. Furthermore, he was not aware of any animosity between the men.

Additionally, Joe mentioned that one time in the summer of 2013, Mark Kelso was involved in an argument with his friend Michael Richard. Joe said that Kelso later apologized to Richard.

iii. Michael Richard

On February 24, 2014, investigators interviewed Joe’s friend Michael Richard. Richard reported that on the evening of February 23, 2014, he went to Peter Fife’s residence. While Richard was there he saw Peter who told him that he saw Kelso fall and hit his head down the skidder.

³ The Market Basket in Tilton is either 13.4 miles or 9 miles from Peter Fife’s residence depending on the route of travel. Either way would take about 20 minutes.

⁴ After reviewing surveillance footage, investigators were able to corroborate that Joe was at the Market Basket in Tilton and paid for his groceries at 2:17 pm on February 23, 2014.

Richard advised that he knew Kelso from being friends with Joe Fife. He indicated that in the spring of 2013, he got into an argument with Kelso, but it was not a big deal.

Investigators obtained records from Richard's employer, Loomis Armored, which indicate that on February 23, 2014, Richard was working from 7:30 a.m. until 3:41 p.m. The records indicate that Richard was in the greater Manchester area around 1:30 p.m. on February 23, 2014, thereby providing an alibi for Richard at the time Kelso was shot.

iv. Raymond Kelso

On February 24, 2014, investigators interviewed Kelso's son, Raymond. The last time he saw his father was around noon on Sunday, February 23, 2014. At that time, Mark told him that he was going to go to Peter Fife's house to finish plowing. Mark complained about logging in the winter and told Ray "don't worry I'm not going to blow my head off." Ray did not believe that his father was suicidal.

Ray indicated that Mark had been logging Peter's property since the winter of 2010. Ray told investigators that his father and Pete have been friendly for years and there was "no bad blood" or a history of violence between them. Ray described Fife as a "hoarder."

With regard to his habits, Ray indicated that his father would always deal in cash and he paid the rent for his wife, Paula and Ray. Ray also reported that his father always carried his single-action revolver with him, which he sometimes carried in his waistband. Ray said that his father was ambidextrous.

v. Debra Guinard

On February 25, 2014 and May 1, 2014, investigators interviewed Kelso's girlfriend, Debra Guinard. She indicated that although Kelso was still technically married, she had been dating him for the past 19 years. She reported that Kelso paid his wife and son's rent.

Guinard told investigators that Kelso and Peter Fife had known each other since Kelso was little. In fact, Fife gave Kelso his first job as a logger. Guinard said that Kelso and Fife had an "excellent" relationship. Guinard described Fife as a "packrat" in that he would pick up things up that were lying around.

Kelso told Guinard about an incident where he got in a verbal confrontation with Joe Fife's friend who works with an armored vehicle. Guinard recalled that the incident took place about three weeks before Kelso died. After the incident, Kelso started carrying around his "cowboy gun" as opposed to his .22.

Guinard reported that the day before Kelso's death, Fife let Kelso drive his vehicle home to save Kelso gas money. Later that evening, Guinard spoke to Fife on the telephone and thanked him for letting Kelso use his truck. Guinard told Fife that she was going to send some magazines and newspapers with Kelso the next day to give to him as a gesture of their appreciation.

On the morning of February 23, 2104, Guinard gave Kelso a match stick pony, a Maxim magazine and Concord Monitor newspaper to give to Fife.

Guinard reported that Kelso always had his .357 revolver with him. One time, she recalled that Kelso put it on the dashboard when he was driving.

Guinard indicated that she did not believe Mark was suicidal, nor did Kelso give her any indication that he was planning to hurt or kill himself.

vi. Valerie Fife

On February 26, 2014, investigators spoke with Peter Fife's wife, Valerie. She reported that she lives in Florida. She described Kelso as Fife's "best friend" and that Kelso was one of the two people that would routinely "check up" on Peter. She indicated that Kelso was almost part of the family and there was no ill will between Fife and Kelso. According to Valerie, Kelso had been logging on the Fife's farm for approximately 5 years.

Valerie told investigators that Fife told her that he saw Kelso walk towards the skidder in the driveway. Peter Fife told her that he heard a loud noise which sounded like a wrench banging against a skidder. Fife responded outside and discovered a "horrible mess" and he surmised that Kelso had fallen into the skidder blade. Peter told Valerie that he picked up a gun off the ground. Valerie explained that it is common for Fife to "pick-up" things that he finds lying around. Furthermore, she described Fife as a responsible gun owner who would have picked up the gun without any deliberation.

vii. Other Witness Interviews

Investigators also interviewed a number of Peter Fife's friends and family in an effort to gather information regarding the relationship between Kelso and Fife to explore a possible motive and document any statements that Fife made about the incident.

Ann Fifield, Peter Fife's sister, reported that she spoke to her brother a few days after the incident. Fife told her that he saw Kelso walking in the driveway. Kelso walked between the skidder and a truck and then disappeared. Fife told her that when he went outside, he found Kelso's gun lying on the ground and he picked it up because that was not a good place for the gun. Fifield reported that Kelso and Fife had a good relationship, and Kelso would routinely check up on Fife.

Stuart Fifield was Fife's brother in-law. Fifield reported that he spoke to Fife on Sunday, February 23, 2104. Fife told him that he was inside the house and saw Kelso walking in the driveway and then he disappeared. Fife guessed that he fell into the skidder. Fife went outside and found Kelso, who was all bloody. Fifield reported that Kelso and Fife were the best of friends.

Oliver Fifield, Peter Fife's great nephew, reported that he was not aware of any animosity between Kelso and Fife. Fifield did not know anyone that had problems with Kelso. Additionally, he believed that Kelso was not suicidal.

Mary Witschonke, Peter Fife's niece, reported that Kelso and Fife were close and she was not aware of any issues between the two men. She said that Fife used to look forward to Kelso's visits.

Cate Weger, Peter Fife's grand niece, reported that Kelso was Fife's best friend and that Fife was a "wreck" over Kelso's death.

b. Shooting Scene

New Hampshire State Police troopers documented the shooting scene of the incident at 269 Borough Road. It was determined that the skidder and dump truck were very close to each other and were separated by less than two feet from another and were only fifteen inches at the closest point. Investigators also documented ice throughout the driveway including the area between the skidder and truck. Investigators located blood and blood spatter in the confined space between truck and the skidder. This blood evidence suggests that the gun was fired within the confined space between the truck and the skidder. Troopers also documented a pool of blood on the sharp metal edge of the skidder. Kelso's vest was discovered on the tailgate of the truck, in a pocket of which, investigators located .38 + P Federal ammunition.

Inside Peter Fife's residence, investigators located a Concord Monitor dated February 22, 2014 and a Maxim magazine, both of which appeared to have been wet.

c. Forensics

i. Autopsy

On February 24, 2014, Acting Deputy Chief Medical Examiner Dr. Caroline Kappen, MD, conducted an autopsy on the body of Mark Kelso. Dr. Kappen noted Kelso suffered a gunshot wound with an entrance wound next to his right nostril with an upward angle. Dr. Kappen located fragments from a bullet from Kelso's head. Kelso also suffered wounds on his right ring finger and middle finger, which Dr. Kappen determined were consistent with graze wounds suffered from a gunshot. Kelso also suffered from a linear laceration across the back of his head. Dr. Kappen ultimately determined that the cause of Kelso's death was a gunshot wound of the head with multiple skull fractures and brain injuries and the manner of death was undetermined.

Sgt. Joe DiRusso of the New Hampshire State Police was also present for the autopsy and noted that Kelso had stippling on his face. Additionally, \$92.00 was located in Kelso's wallet, which was discovered on his person.

New Hampshire Chief Medical Examiner Dr. Thomas A. Andrew was consulted regarding the autopsy of Mark Kelso. After reviewing photographs from the autopsy and given the degree of stippling on Kelso's face, Dr. Andrew opined that the barrel of the revolver was very close to Kelso's face when fired. He opined that the barrel was somewhere within a range from 6 to 8 inches to 2 feet from Kelso's face when it was fired. Additionally, he determined that the wounds on Kelso's right hand were consistent with graze wounds and surmised that it was possible that they were from the same bullet which struck Kelso in the face. Dr. Andrew noted that there did not appear to be any stippling on Kelso's right hand but explained that it was possible that Kelso's right hand was too close to the gun barrel to allow for stippling to deposit. Dr. Andrew noted the injury to the rear of Kelso's head was consistent with blunt impact trauma suffered as a result of striking something sharp, like a skidder. In the end, Dr. Andrew noted that he did not observe anything and was not aware of any reason which would lead him to believe that Kelso's death was anything but accidental. For similar rationale, given the stippling and the characteristics of the wound to Kelso's face and the injury to his right hand, Dr. Andrew determined that the manner of Kelso's death was inconsistent with a suicide.

ii. Toxicology Results

The toxicology analysis of a sample of Kelso's blood did not reveal any positive findings.

iii. Forensic Testing

Peter Fife's boots, jacket and hat were seized pursuant to a search warrant based on the investigator's belief that they saw blood spatter on them. These items were submitted to the New Hampshire State Police Forensic Laboratory for testing. It was determined that only Fife's left boot and jacket had blood on them. Further testing revealed that Mark Kelso's blood was present on Fife's left boot and the blood on the jacket was not from Mark Kelso.⁵

Laboratory testing also determined that there was blood on the Maxim magazine seized from Peter Fife's residence.

iv. Ballistics

Kelso's revolver was submitted to the New Hampshire State Police Forensic Laboratory for testing. The revolver was determined to be an Uberti & Gardone, model

⁵ The blood on Fife's boot did not appear to have been deposited by the fatal gunshot, but was more consistent with being deposited after Fife went out to check on Kelso.

Cattleman, caliber 357 magnum, single-action revolver. The revolver was test fired and found to be functioning normally and not susceptible to accidental discharge due to jar-off or push-off. The single action trigger pull measurements were between 1 ¾ and 2 ½ lbs, which fell on the low end of the normal spectrum for force required to engage the trigger.

The bullet fragments located in Kelso's head at autopsy were analyzed by the New Hampshire State Police Forensic Laboratory. Analysis revealed that the bullet fragments were consistent with .38/357/9mm caliber ammunition and they could have been fired from the barrel of Kelso's .357 revolver based upon the class characteristics of the fragments.

ANALYSIS

Although the investigation cannot completely rule out the possibility that Mark Kelso died as result of suicide or homicide, based on the totality of the evidence, it appears that Kelso died as a result of an accidental discharge of his revolver.

First, it appears that the bullet that struck Kelso was fired from his own gun. This is based on the fact that the bullet fragments recovered from Kelso's head were consistent with the unfired ammunition located in the gun, the ammunition found in Kelso's vest and the results of the ballistics analysis.

Next, given the degree of stippling on Kelso's face and the shot's upward angle, the evidence suggests that the gun was fired within an arm's length of Kelso's face. Furthermore, the blood evidence and its location on the truck and skidder indicate that Kelso's gun discharged within the very confined space between the two pieces of machinery. Given that extremely tight space and the very icy conditions on the ground, it is highly unlikely that a second person could have been in that space with Kelso and fired the fatal shot at the appropriate distances to cause Kelso's wound characteristics.

In addition, the graze wounds on Kelso's right hand are not consistent with wounds caused during a suicide.

Moreover, given the injury to the rear of Kelso's head and the blood pool documented on the skidder, it is clear that at some point Kelso fell backwards and struck his head on the sharp metal of the skidder. What is not clear is what caused Kelso to fall backwards or the timing of the fall in relation to the gunshot, i.e., was the fall secondary to the gunshot or did Kelso fall and in the process accidentally fire his gun.

Taking all of the evidence in the totality, the consensus is that it is highly unlikely that Kelso died as a result of homicide. The more plausible explanation is that Kelso died as a result of an accidental discharge, however how that accidental discharge actually occurred remains unclear.

The belief that Kelso died as a result of an accidental discharge is supported by witness reports of Kelso's sometimes careless behavior with firearms. In particular, witnesses report that Kelso often carried his single action revolver in his waistband and also placed it an unsecured fashion on his dashboard when he drove. The characteristics of Kelso's gun itself support the conclusion that Kelso died as a result of an accidental discharge. Laboratory testing revealed that the trigger pull on the weapon was on the low end of the normal spectrum, meaning it would have taken little force to fire the gun. Additionally, since the revolver was single action, the firing mechanism could have become cocked unbeknownst to Kelso.

Next, although motive is not an element of homicide, an established motive is often powerful evidence which can help investigators shed light on the circumstances surrounding a death and often pinpoint the perpetrator. Here, investigators were unable to develop any motive that anyone, including Peter Fife, would have to kill Mark Kelso. That included the fact that investigators were unable to document any recent accounts of hostility or threats towards Kelso.

With regard to Peter Fife, by all accounts, the evidence demonstrates that Fife and Kelso had known each other for many decades and Fife even considered Kelso one of his best friends. There was no evidence of any animosity between Fife and Kelso. In fact, just the day before Kelso's death, Fife let Kelso borrow his truck in an effort to save Kelso money. The next day, Kelso brought Fife a care package consisting of a Maxim magazine and Concord Monitor. Moreover, multiple witnesses explained how Fife even profited off Kelso's logging activity on his property. The recent nature and past history of the relationship between the two men discounts any potential motive that Fife might have had to kill Kelso. Furthermore, although Fife did not immediately volunteer that he picked up and moved the gun, Fife had a credible explanation for that behavior and other witnesses confirmed that behavior was consistent with Fife being a "packrat," his behavior with guns, and picking things up. Finally, the fact that there was still money in Kelso's wallet discounts the idea that Kelso was killed for his money.

In spite of significant investigative efforts, no alternative suspects were developed who might be responsible for Kelso's death. To the extent that Joe Fife and Michael Richard can be considered alternative suspects responsible for Kelso's death, investigators were able to corroborate their alibis and document that both were elsewhere around the time that it is believed that Kelso was injured.

CONCLUSION

In light of totality all this evidence, the most likely cause of Mark Kelso's death was an accidental discharge of his revolver. As with some accidents where there are no witnesses, the exact sequence of events and precise mechanism which led to the shooting

cannot be determined. Numerous possibilities could account for the shooting though, including that Kelso slipped on the ice, was attempting to de-cock the gun, dropped the gun or struck his head before the gun fired. Regardless, some sort of accidental discharge is the mechanism most supported by the evidence that accounts for Kelso's death.