



OFFICE OF THE ATTORNEY GENERAL

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Report of the Attorney General on the Use of Deadly Force By State Trooper in Dover-Foxcroft on November 29, 2011

Facts

On the Tuesday morning of November 29, 2011, Michael S. Curtis, 46, of Sangerville, was shot and killed by State Police Trooper Jon Brown during a confrontation at the Piscataquis Valley Fairgrounds in Dover-Foxcroft.

Shortly after 9 a.m. on November 29, Curtis, a dispatcher for the Piscataquis County Sheriff's Office, left his home in Sangerville after an argument with his wife and drove to the Hilltop Manor in Dover-Foxcroft where his wife's ex-husband, Udo Schneider¹, was working with others outside the facility. Upon arrival, Mr. Curtis confronted Mr. Schneider in the presence of other workers and shot and killed him. One of the coworkers called 911 and reported that the assailant, who was later identified as Michael Curtis, fled the scene in a white Ford pickup truck bearing firefighter license plates.

No more than ten minutes after the 911 call, at about 9:36 a.m., Lt. Scott Arno of the Dover-Foxcroft Police Department spotted a vehicle matching the description in the 911 call and followed it to the Piscataquis Valley Fairgrounds. A lone occupant, later identified as Michael Curtis, was in the vehicle. At the same time, other officers from the Dover-Foxcroft Police Department, as well as officers from the Piscataquis County Sheriff's Office, the Maine State Police, and the Dexter, Milo, and Brownville police departments responded to the 911 report. Among these officers was Trooper Jon Brown of the State Police. Trooper Brown was patrolling in Ripley when, at about 9:35 a.m., he heard a State Police radio broadcast reporting the shooting at Hilltop Manor. A few minutes later, Trooper Brown heard the report that the suspect vehicle had driven into the fairgrounds in Dover-Foxcroft.

¹ Udo Schneider is not related to Attorney General William J. Schneider.

On his way to Dover-Foxcroft, Trooper Brown came up behind Dexter Police Chief James Emerson, who was also responding to the 911 call, and, at 9:53 a.m., both officers arrived at the fairgrounds. Eighteen minutes had elapsed from the time Trooper Brown heard the initial State Police broadcast. During those 18 minutes, Trooper Brown became aware that the victim of the shooting at the Hilltop Manor had been shot several times and that he was likely deceased. Trooper Brown also learned that the suspect had fled the scene of the shooting in a white pickup truck with firefighter plates, that the suspect was armed with at least a handgun, that shots had been fired by the suspect after his arrival at the fairgrounds, and that there were at least four police officers at the fairgrounds. He also learned from a State Police broadcast that officers at the scene were having difficulty managing the scene because of the number of additional responding officers, and that officers at the scene had requested the assistance of a State Police negotiator and the State Police Tactical Team. The source of all of Trooper Brown's information until his arrival at the fairgrounds was State Police dispatch in Orono. Trooper Brown was unable to monitor broadcasts by the Piscataquis County Sheriff's Office or monitor radio conversations among other responding officers.

At approximately 9:43 a.m., David Wilson, an agent of the Maine Drug Enforcement Agency, arrived at the fairgrounds and took a position in an open-sided building over 800 feet west of Mr. Curtis' location. Using binoculars, Agent Wilson saw a man with no shirt leaning against the back of the pickup truck. Agent Wilson, who personally knew Michael Curtis, did not at that time recognize the man as Mr. Curtis.

At approximately 9:45 a.m., Agent Wilson looked away from Mr. Curtis to use his radio, and heard the report of four gunshots that seemed to come from Mr. Curtis' location. Agent Wilson looked back at Mr. Curtis through his binoculars and saw that Mr. Curtis was maintaining the same position observed earlier. Agent Wilson theorized that Mr. Curtis had fired the shots in the air. He announced over his police radio, "Gunshots, gunshots, be advised gunshots have been fired." This information was subsequently broadcast by the State Police dispatcher in Orono and heard by Trooper Brown, still on his way to the fairgrounds. In the meantime, Lt. Arno, Chief Dennis Dyer, Sheriff John Goggin, Chief Deputy Dale Clukey, and Deputy James Kane joined Agent Wilson at his location. Independent of one another, both Lt. Arno and Chief Dyer requested the assistance of the State Police Tactical Team and a State Police negotiator.

Trooper Brown and other State Police officers responding to the fairgrounds were unaware of two-way radio communications between the suspect himself, who had a portable radio and was broadcasting on a fire frequency, and a dispatcher at the Sheriff's Office. For several minutes, the dispatcher attempted to persuade Mr. Curtis to relinquish his weapon and surrender to the police. At 9:53 a.m., at the same time that Trooper Brown arrived at the fairgrounds, Sheriff Goggin took over radio communications with Mr. Curtis and announced the following:

Mike, I'm coming out right now, I'm coming up and talk to you right where you're at. You stay right there. You just throw your gun in the cab of the truck – you throw it down, I don't care what you do with it. Nobody's going to hurt you Mike, I give you my word, nobody's going to hurt you, we're going to give you the help

that you need and that's it. Nobody else is going to get hurt today. Now you just listen to me, and I'll be right out and we're going to help you. Okay?

After Mr. Curtis acknowledged the announcement, Sheriff Goggin, notwithstanding dissent from other officers, started out of the building into the field walking in the direction of Mr. Curtis some 800 feet away.

When Trooper Brown arrived at the fairgrounds, he was armed with his service weapon and a rifle. While he was unaware of the exact location of Mr. Curtis, he could see what he presumed to be Mr. Curtis' pickup truck in a field several hundred feet away. He also saw what appeared to be a log yard on the other side of the truck and assumed that people were likely working in the yard. Based on previous radio traffic, Trooper Brown anticipated but did not observe a significant law enforcement presence at the fairgrounds nor did he observe what he anticipated to be evidence of officers deployed around the vehicle in a "perimeter" fashion intended to preclude possible further flight. Trooper Brown sought out the on-scene commander, who was identified to him by Chief Emerson as MDEA Agent Wilson. He asked Agent Wilson if the man next to the pickup truck was the suspect and if the suspect had fired at the officers at the fairgrounds. While speaking with Agent Wilson, Trooper Brown observed other officers taking cover inside an open-sided building containing farm machinery. Based on these observations and the radio traffic that he received from the State Police dispatcher in Orono, Trooper Brown concluded that the officers he saw in the open-sided building were the total complement of officers on scene and that no perimeter had been established by law enforcement. Trooper Brown remained unaware that communication had been established between Mr. Curtis and Sheriff Goggin.

Trooper Brown took a prone position on the ground near the building in which he had observed the other officers, and issued commands to Mr. Curtis to "show your hands." After Mr. Curtis failed to comply with the commands, Trooper Brown fired three rounds from his rifle at Mr. Curtis from the prone position. Immediately after the first round, Mr. Curtis fired his weapon – a handgun – into the air. Trooper Brown's rounds struck the pickup truck but missed Mr. Curtis. At the time that Trooper Brown fired the shots at Mr. Curtis, he was unaware that Sheriff Goggin intended to walk out into the field to Mr. Curtis' location. Similarly, after firing the three shots, Trooper Brown was unaware of the following radio communication from Mr. Curtis:

Scream all you want, scream all you want, I'm not going to put the friggin gun down. I can see you, I can see you from where I am, I'm not going to hurt nobody, I'm not going to hurt nobody, I'm not going to hurt nobody.

I want help, but nobody seems to want to help me, all they want to do is shoot me.

Walk up to me – you know – I don't care, I'm not going to hurt nobody.

Surprised by Trooper Brown's actions in firing the shots at Mr. Curtis, other officers in the open building next to him, including a person Trooper Brown later learned to be Sheriff Goggin, admonished him for his actions. It was at this point that Trooper Brown became aware that others were communicating with Mr. Curtis, and that Sheriff Goggin intended to walk out into the field to meet with Mr. Curtis. Trooper Brown also learned that two officers responding to the 911 call had been directed to the log yard, an area closer to Mr. Curtis than the building in which the other officers were located.

When Trooper Brown saw Sheriff Goggin walking into the field toward Mr. Curtis, he yelled several warnings for the Sheriff to "get out of the field." When Sheriff Goggin ignored the warnings, Trooper Brown left the other officers and enlisted the assistance of a Dexter police officer, Sgt. Kevin Wintle, to accompany him in moving to a different location. The two officers went into a wooded area generally to the north of where Mr. Curtis was located next to his pickup truck. As Trooper Brown and Sgt. Wintle were moving closer to Mr. Curtis, Sheriff Goggin continued walking in the open field and was closing the distance between himself and Mr. Curtis.

When Trooper Brown found a spot where he had a closer and clearer view of Mr. Curtis, he aimed and fired one round at Mr. Curtis. At the time of the shot, Mr. Curtis was still armed and was looking in the direction of Sheriff Goggin, who was less than 150 feet from him. Trooper Brown was nearly 500 feet from Mr. Curtis when he discharged the rifle. The round struck Mr. Curtis. Medical aid was rendered at the scene and Mr. Curtis was taken by ambulance to a local hospital where he died a short time later.

Detectives from the Office of the Attorney General went to the scene to conduct an investigation. They were assisted by several members of the State Police, as well as members of the Maine Warden Service and several other agencies. The weapon used by Mr. Curtis to kill Mr. Schneider and the one in his possession at the fairgrounds was a Glock .40 caliber semiautomatic pistol with a total capacity of 16 rounds. Investigation at the Hilltop Manor disclosed that Mr. Curtis had fired 12 rounds at Mr. Schneider. Investigation at the fairgrounds resulted in the recovery near where Mr. Curtis had been standing of five spent .40 caliber casings, accounting for the four shots heard by Agent Wilson and the single shot discharged by Mr. Curtis at the time Trooper Brown initially shot at him. An examination of Mr. Curtis's pistol after his death disclosed seven live rounds still in the weapon, indicating that Mr. Curtis reloaded the weapon between the time he shot and killed Mr. Schneider and the time he was shot and killed by Trooper Brown. Several loose live .40 caliber rounds were found in the pickup truck.

Dr. Edward David of the Office of the Chief Medical Examiner conducted an investigation at the scene. The Chief Medical Examiner, Dr. Margaret Greenwald, later conducted a post mortem examination in which she determined the cause of Mr. Curtis' death to be a single gunshot wound that entered the right posterior chest, and exited the left lateral chest. Mr. Curtis' blood-alcohol content (BAC) at the time of his death was 0.216%.

Legal Analysis and Conclusion

The Attorney General is charged by law with investigating the circumstances under which any law enforcement officer uses deadly force while acting in the performance of the officer's duties. The sole purpose of the Attorney General's investigation is to determine whether self-defense or the defense of others or the need to arrest or stop a dangerous person from escaping, as defined by law, is reasonably generated by the facts so as to preclude criminal prosecution. The review does not include an analysis of potential civil liability, whether any administrative employment action is warranted, or whether the use of deadly force could have been averted.

Under Maine law, for an individual, including a law enforcement officer, to be justified in using deadly force in self-defense or the defense of others, two requirements must be met. First, the individual must actually and reasonably believe that deadly force is imminently threatened against the individual or against someone else, and, second, the individual must actually and reasonably believe that deadly force is necessary to counter that imminent threat. In addition, under certain limited circumstances, a law enforcement officer is authorized by law to use deadly force to make an arrest or prevent an escape. Specifically, a law enforcement officer is justified in using deadly force only when the officer reasonably believes that such force is necessary and the officer reasonably believes that the person (1) has committed a crime involving the use or threatened use of deadly force, (2) is using a dangerous weapon in attempting to escape, or (3) otherwise indicates that the person is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay. When using deadly force to make an arrest or prevent an escape, the officer must first make reasonable efforts to advise the person that the officer is a law enforcement officer, and the officer must have reasonable grounds to believe that the person is aware of this advice.

Whether a use of force is reasonable is based on the totality of the particular circumstances, and must be judged from the perspective of a reasonable officer on the scene, allowing for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. The analysis requires careful attention to the facts and circumstances of a particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Attorney General William J. Schneider has concluded that at the time Trooper Brown fired the shot that resulted in Mr. Curtis' death, it was reasonable for Trooper Brown to believe that deadly force was imminently threatened against Sheriff Goggin, if not others, and it was reasonable for Trooper Brown to believe that it was necessary for him to use deadly force to counter that imminent threat of deadly force. Moreover, Attorney General Schneider determined that Trooper Brown reasonably believed that Mr. Curtis had committed a crime involving the use of deadly force, was likely to seriously endanger human life unless apprehended without delay, and that Mr. Curtis knew that Trooper Brown and the other officers at the fairgrounds were law enforcement officers attempting to arrest him. The Attorney General's conclusions are based on an extensive scene investigation, interviews with numerous individuals, and review of all evidence made available from any source.

It is beyond the scope of this report and beyond the authority and expertise of the Attorney General's Office to determine or speculate on Mr. Curtis' motivations, his state of mind, or the medical or psychological underpinnings of his behavior and actions on November 29, 2011, in Dover-Foxcroft.

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