

May 14, 2018 Wales Use of Deadly Force Incident

As required by 5 M.R.S.A. § 200-K, the Maine Deadly Force Review Panel submits the following report of the May 14, 2018 use of deadly force incident involving Maine State Police Corporal James MacDonald. By statute, after the release of the report of the Attorney General, the Panel shall examine deaths or serious injuries resulting from the use of deadly force by a law enforcement officer. The purpose of such examination is to identify whether there was compliance with accepted and best practices under the particular circumstances or whether the practices require adjustment or improvement. The Panel is charged with recommending methods of improving standards, including changes to statutes, rules, training, and policies and procedures designed to ensure best practices that demonstrate increased public and officer safety.

Factual Synopsis

On Sunday, May 13, 2018 at 6:28 P.M., the Maine State Police (MSP) were dispatched in response to a report that William Derick shot at his wife as she was leaving their home on the Pond Road in Wales. MSP learned that Mr. Derick suffered from paranoid schizophrenia and anxiety for which he had medications that he was not currently taking, and that law enforcement had taken Mr. Derick into protective custody for mental health treatment several times previously. His wife told the MSP that Mr. Derick was in a state of extreme crisis, had access to a handgun as well as the shotgun or rifle he used to shoot at her, and was in their home without access to a phone. The MSP response included coordination of assistance from the Androscoggin County Sheriff's Office and the Sabattus Police Department, activation of the MSP Tactical Team, and engagement of the MSP Crisis Negotiation Team. There were several hours of attempted negotiation and de-escalation, staged from an armored vehicle deployed to facilitate communications absent a phone in the residence and to provide a degree of protection for the responding officers. Mr. Derick continued to brandish weapons and threatened to kill the responding officers. At 3:21 A.M. on May 14, 2018, Tactical Team member Corporal James MacDonald, observing Mr. Derick taking a shooting position and aiming at the armored vehicle, shot Mr. Derick. Cpl. MacDonald stated he took this action to protect the law enforcement officers on the scene and neighbors in the nearby residences within range.

Information the Panel Reviewed

Prior to its review on January 28, 2021, the Panel received a complete copy of the investigation of deadly force conducted by the Attorney General's Office. This report included all of the original investigative materials, including original interview recordings and reports, forensic reports, photographs, emergency communication transcripts, and other materials. The Panel also reviewed the internal critical incident review report of the Maine State Police dated January 12, 2021 and relevant MSP policies. The Panel received additional clarifying information based on questions from Panel members. Attorney General Detective Patrick Gagnon attended the January 28th meeting and answered questions of Panel members.

Summary of Panel Discussion

On January 28, 2021 and February 25, 2021, the Panel met via Zoom and conducted a review of the referenced incident. The Panel discussed the strategies that the tactical team used. Of particular concern to the Panel was the deployment of the armored vehicle and whether the presence of the vehicle itself contributed to the continued escalation of Mr. Derick's mental health crisis. The Panel discussed the policies and procedures applicable to this event and the responding officers' compliance with those policies.

Observations

1. The Panel observed that law enforcement was responding to an armed person in an acute state of mental health crisis. Mr. Derick had a long history of mental health crisis, including violent behavior. In the incident that precipitated the standoff with law enforcement, he had shot at his wife, who described having felt the bullet pass by her head.
2. The Panel noted that the State Police assessed the unfolding incident in which an armed individual had barricaded himself in his home. The troopers communicated with their superiors, followed instructions to attempt to de-escalate the incident, completed a barricaded subject checklist, and eventually activated the Tactical and Crisis Negotiation Teams. The Tactical Team was activated because the incident was determined to be "a high-risk situation" due to Mr. Derick shooting at his wife and barricading himself in his home with firearms. The Tactical Team Commander determined that the use of the armored vehicle was warranted and was a passenger in that vehicle during its deployment.
3. The Panel observed that the responding officers and, subsequently, the tactical team gathered as much information as possible to inform their approach to the scene and interaction with Mr. Derick, including contact with the Togus VA hospital where Mr. Derick had received services.
4. The Panel noted that officers were aware that Mr. Derick had shot at his wife with a shotgun or rifle as she was leaving the premises and that he had access to a handgun in the residence.
5. The Panel noted that, while the closest neighboring home was evacuated, other nearby residences were occupied.
6. The Panel expressed concern about the presence of the armored vehicle, which is menacing in appearance and, while uniquely equipped for communication with a barricaded individual and offering a degree of protection for operators, may have exacerbated Mr. Derick's state of crisis. The panel notes that the mere presence of an armored vehicle may have an undesirable impact on the emotional state of such persons and, absent immediate necessity, that effect should be considered in deciding if and how to deploy the vehicle.
7. The Panel expressed concern that, while the armored vehicle is resistant to most ammunition, it is not "bulletproof" and, therefore, the vulnerability of officers inside the vehicle would necessarily be a consideration in any decision regarding the type of force or tactics required to contain Mr. Derick.
8. The State Police General Order governing the actions of the Tactical Team does not specifically address the use of the armored vehicle. Colonel John Cote, the chief of the State

Police, clarified that the armored vehicle is a tool that may be deployed at the discretion of the Tactical Team Commander based on situational needs.

9. The primary law enforcement agency, the Maine State Police, finalized its critical incident report on January 12, 2021, subsequent to the Attorney General's legal review that was released on December 11, 2020.

Recommendations

1. The Panel recommends to the Board of Trustees of the Maine Criminal Justice Academy that the certification standards for tactical teams include a requirement of a written policy regarding the deployment of the armored vehicle that balances the utility of the vehicle with the effect of its use or presence in a situation, especially when interacting with persons in mental health crisis.
2. The Panel recommends that all law enforcement crisis response or tactical teams establish relationships and protocols with mental health crisis response professionals. This will ensure that these resources are available to consult in critical incidents.

Timeline and Details

On Sunday, May 13, 2018 at 6:28 P.M., a Waterville resident called 911 reporting that his mother called him and said she was scared because her husband, William Derick, shot at her as she was leaving their home on the Pond Road in Wales. The caller said that his mother was at the caller's grandmother's house, which was nearby.

The Regional Communications Center (RCC) in Gray dispatched State Police Corporal Ricci Cote, who interviewed William Derick's wife. She told him that her husband suffered from physical and mental health issues. She said that he had been acting strangely and today he brandished a rifle or shotgun. He showed her that it was loaded, pointed it at her, and told her he was going to kill her. He then ordered her out of the house and shot at her as she fled. In addition, Corporal Cote learned that a nearby neighbor had called the State Police to report that he heard someone yelling and breaking glass in the area. Corporal Cote requested additional assistance from the Androscoggin County Sheriff's Office and the Sabattus Police Department. Officers from both agencies arrived and took positions on the perimeter of the residence. Corporal Cote requested further assistance from a K-9 team, and a trooper from the State Police Tactical Team. He also briefed a prosecutor from the District Attorney's Office and informed her that he would be applying for arrest and search warrants.

Corporal Cote learned that William Derick was employed as a carnival worker, suffered from paranoid schizophrenia and anxiety for which he had been prescribed medication that he had not been taking. He had at least one rifle or shotgun and a handgun. There was no working phone in the residence. There had been at least three prior incidents in which law enforcement had taken Mr. Derick into protective custody for mental health treatment, and he was receiving mental health services from Togus VA. Corporal Cote completed a barricaded subject checklist.

The Tactical Team trooper contacted the Commander of the State Police Tactical Team and briefed him on the situation. The Commander requested that an effort be made to contact Mr. Derick, who had no working phone, to see if he would come out of the residence and surrender to officers. Law enforcement officers established a perimeter around Mr. Derick's residence.

Corporal Cote parked at the end of the driveway and positioned a spike mat to hinder any vehicle escape attempt. He then hailed Mr. Derick using his cruiser's PA system, asking him to come outside. Mr. Derick responded by yelling profanities, saying he was not coming out and to leave him alone. The Tactical Team was activated, and the State Police Crisis Negotiation Team (CNT) was also notified and responded.

Additional tactical team members arrived and were assigned to positions around the perimeter. CNT negotiators arrived to assist with negotiations. Team members were assigned to use an armored vehicle, which is bullet resistant but not bulletproof. At approximately 11:00 PM, Corporal James MacDonald, another Tactical Team member, arrived on scene. The tactical team commander briefed Corporal MacDonald on the situation and assigned him to watch the front of the Derick residence from a position in a field across the street about 140 yards away. Corporal MacDonald was armed with a precision rifle and night vision scope.

By 1:21 AM, an arrest warrant for Mr. Derick and a search warrant for his residence were obtained. The armored vehicle was positioned at the end of the driveway with its blue emergency lights activated and its spotlight illuminating the front of the house. Mr. Derick said he would shoot the first [expletive] he saw. A negotiator instructed Mr. Derick on multiple occasions via the armored vehicle's PA system not to come to the door with a gun and to put the gun on the ground. After about 45 minutes, the tactical team commander inside the armored vehicle decided to move the vehicle away from the house in an effort to de-escalate the situation.

Members of the tactical and negotiation teams conferred and decided they would continue to take "a very soft approach," as Mr. Derick continued to be very agitated. However, after about 30 minutes during which the negotiator was unsuccessful in persuading Mr. Derick to come out of the house, the tactical team returned the armored vehicle to the end of the driveway. Mr. Derick responded by positioning himself at a bay window holding a camouflaged-colored long gun. Mr. Derick left the window area and moved to the door, but no longer had the rifle. He began waving his arms around, screaming, and giving the finger to the armored vehicle. Mr. Derick was then observed ducking down at the windowsill, popping his head up briefly to look out, and ducking back down. He continued these motions five or six times. The last time he popped up, he was armed with the rifle. He was in a crouched position and pointing the rifle out the window at the armored vehicle. Only the rifle and the top of his face were visible at this point. He was repeatedly ordered to drop his gun. When he pointed the barrel directly at the armored vehicle, the tactical team commander radioed the team that Mr. Derick was pointing his gun at the armored vehicle, which was positioned about 15 yards from the house.

At 3:21 AM, Corporal MacDonald heard the commander report repeatedly that Mr. Derick was pointing his gun at the armored vehicle. He also heard the negotiator continually ordering Mr. Derick to put his gun down. He observed Mr. Derick appearing to kneel at the bay window, assuming a "shooting position," with the barrel of his rifle resting on the windowsill and pointed in the direction of the armored vehicle. Corporal MacDonald fired one shot from his position in the field, which was observed on the camera in the armored vehicle by the commander to strike Mr. Derick in the head. Corporal MacDonald said that he used deadly force for the protection of the troopers in the armored vehicle, which he knew to be bullet resistant, but not bulletproof. He also stated that he was concerned for the welfare of the troopers on the perimeter and others in nearby residences within range.

An autopsy determined that Mr. Derick's cause of death was a single gunshot wound to the head. Evidence collected at Mr. Derick's house included the long gun that Mr. Derick was pointing out the window, which turned out to be a .177 caliber pellet rifle, along with firearms inside and

outside the house. These included a 9mm handgun, a 12-gauge shotgun, and a 50-caliber black powder rifle. Evidence collected at Corporal MacDonald's position in the field included his rifle, remaining cartridges, and one spent cartridge

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