

October 19, 2021 - Falmouth Use of Deadly Force Incident

As required by 5 M.R.S. § 200-K, the Maine Deadly Force Review Panel submits the following report of the October 19, 2021, use of deadly force incident involving Sgt. Kevin Conger and Officer Peter Theriault of the Falmouth Police Department. 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 the examination is to find independently whether there was compliance with accepted and best practices under the 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 prove increased public and officer safety. The Panel is not charged with undertaking a *de novo* review of the determination of the Attorney General regarding the legality of the use of deadly force by law enforcement; discussions and recommendations of the panel are independent of the Attorney General.

Factual Synopsis

Daniel DiMillo, 51, lived with his elderly parents in Falmouth. During the early evening of Tuesday, October 19, 2021, callers reported to the Falmouth Police Department that a man later determined to be Mr. DiMillo was running around the intersection of Lunt Road and Middle Road in Falmouth brandishing a knife. Falmouth Police Sergeant Kevin Conger and Officer Peter Theriault responded to the call and observed Mr. DiMillo with a knife coming from the tree line on the north side of Lunt Road. Mr. DiMillo charged Sgt. Conger with the knife. He ignored commands to drop the knife and continued advancing toward Sgt. Conger, who unsuccessfully deployed his TASER. Sgt. Conger fell to the ground while backpedaling and Officer Theriault fired a single shot at Mr. DiMillo. Sgt. Conger got back to his feet. Mr. DiMillo had moved about 12-15 feet away from Sgt. Conger and Officer Theriault when he sprinted towards the two officers with the knife held in his right hand and the blade pointing downward. Both officers shot multiple times at Mr. DiMillo. Mr. DiMillo died at the scene.

Information the Panel Reviewed

Before its review, the Panel received a complete copy of the investigative materials compiled by the Attorney General's Office. The materials consisted of all the original investigative data, including interview recordings and reports, forensic reports, photographs, emergency communications transcripts, criminal history, medical reports, and other materials. The Panel also reviewed the report of the critical incident review conducted by the Falmouth Police Department dated April 8, 2022, as well as the Attorney General's report of April 15, 2022.

Summary of Panel Discussion

On May 26, 2022, the Panel met via Zoom, reviewed the referenced incident, and asked questions of Attorney General Detective Michael Durham, the primary investigator. The Panel discussed less-lethal means of dealing with situations as was presented in this case, noting that the effectiveness of electronic weapons or other less-lethal means is historically limited and not

feasible in situations like this case when officers are faced with an imminent and immediate threat of deadly force. The Panel also discussed co-responding mental health professionals and agreed that the only appropriate response to a person in mental health crisis offering a clear and present danger to others is law enforcement.

Observations

1. Mr. DiMillo had a substantial history of paranoia and, on several occasions, his parents had sought law enforcement and mental health intervention in circumstances when Mr. DiMillo was physically aggressive and threatening to them. In none of these circumstances did the responding professionals place Mr. DiMillo in protective custody. The Panel discussed the complexity of Maine's involuntary commitment process and that the time to reduce the risk of tragedies such as this is before crises of this level when the family is reaching out for help.
2. This incident allowed no time for consultation with mental health professionals with only 13 minutes elapsing from the 911 call to officers arriving on the scene and 74 seconds from then until the use of deadly force. The Panel discussed the dangerousness of this situation and that it was an example of a circumstance in which a law enforcement/mental health co-response would not have been feasible or appropriate.
3. There were many citizen witnesses to this incident, and the accounts of the witnesses all aligned and corroborated the officers' reports of what happened.
4. Sgt. Conger attempted to subdue Mr. DiMillo with a less-lethal weapon, deploying his TASER. The TASER was not effective, and Mr. DiMillo continued to advance aggressively toward Sgt. Conger with his knife poised to stab the sergeant. The Panel discussed that this was a situation in which the use of a less-lethal weapon was not feasible due to the level of threat presented by Mr. DiMillo and the unreliability of such weapons.
5. The Panel observed and commended Officer Theriault for quickly recognizing the level of threat and firing his weapon once, resulting in Mr. DiMillo moving away from Sgt. Conger, and not shooting again until Sgt. Conger was safely out of the line of fire.

Recommendations

None

Timeline and Detail

At about 5:46 PM on Tuesday, October 19, 2021, a motorist called 911 from his vehicle while near the intersection of Lunt Road and Middle Road in Falmouth and reported that a man was "jogging" in a circle on Lunt Road brandishing a knife. The caller later described the weapon

as a “dagger” with a six-inch double-edged blade.¹ The man with the knife was later identified as Daniel DiMillo. Falmouth Police Sergeant Kevin Conger and Officer Peter Theriault were dispatched to the call. In the meantime, the same caller alerted nearby firefighters, reporting that Mr. DiMillo was “air boxing” and mouthing something while holding the “dagger” in his right hand. He observed Mr. DiMillo leave Middle Road on foot and go into the yard of a nearby residence. The caller parked his vehicle on Lunt Road and continued to watch Mr. DiMillo.

At about 5:57 PM, a Falmouth firefighter, who was at the Plummer School near the intersection of Lunt Road and Middle Road, contacted the Falmouth Police Department and similarly reported that a man was running around with a long knife near the intersection.

At about 5:59 PM, Sgt. Conger and Officer Theriault, both in uniform, arrived at the scene and parked their fully marked police vehicles on the south side of Lunt Road, facing east, and got out of their vehicles. The original caller alerted the officers to where he had last seen Mr. DiMillo. At about that same time, Sgt. Conger saw Mr. DiMillo yelling unintelligibly and walking from some vegetation near the DiMillo residence. Officer Theriault then saw Mr. DiMillo standing with his knees slightly bent, his arms out and bent up at the elbows, and brandishing a six to eight-inch knife in his right hand with the blade pointing downward. Officer Theriault yelled several times at Mr. DiMillo to drop the knife; he did not comply. Officer Theriault had his handgun drawn and Sgt. Conger had his TASER drawn. Both officers were standing near the center line of the roadway. Mr. DiMillo ran at Sgt. Conger while holding the knife out in front of him. Sgt. Conger fired his TASER; however, it did not affect Mr. DiMillo.² Sgt. Conger moved backward and lost his balance, falling against a van that was stopped in the roadway. Mr. DiMillo, who the officers said was about 10 to 12 feet away from Sgt. Conger when Sgt. Conger fell, continued advancing toward Sgt. Conger while holding the knife in his right hand and making a stabbing motion. Officer Theriault fired one shot at Mr. DiMillo. He was fearful of firing more rounds because Mr. DiMillo was quickly “on top” of Sgt. Conger and Officer Theriault feared he would shoot Sgt. Conger. Mr. DiMillo’s feet appeared to get tangled with Sgt. Conger’s legs and Mr. DiMillo rolled over the top of Sgt. Conger.

Sgt. Conger stood back up and drew his handgun. Mr. DiMillo had moved eastward and was moving in a loop fashion in the roadway, ultimately turning back towards Sgt. Conger and Officer Theriault. The two officers were standing next to each other in front of Sgt. Conger’s police vehicle. The officers estimated that they were about 12 to 15 feet away from Mr. DiMillo. Mr. DiMillo clenched his fists while still holding the knife in his right hand with the blade pointing down. Officer Theriault again ordered Mr. DiMillo to drop the knife and, again, Mr. DiMillo did not comply. Mr. DiMillo then ran towards the officers. Both officers indicated that they saw something in Mr. DiMillo’s hand, which they believed to be a knife. Sgt. Conger recalled that Mr. DiMillo was yelling indiscernible words. Both officers fired their weapons at Mr. DiMillo

¹ Two knives matching this description were later found at the scene, one near Mr. DiMillo’s body and the other on the ground near the driveway to his nearby residence.

² It was later found that only one of the two probes actually connected when both must connect with a person for the TASER to function.

multiple times.³ Mr. DiMillo fell to the ground and was observed to have a gunshot wound to his head.

At about 6:01 PM, Sgt. Conger radioed “shots fired.” Falmouth EMS responded to the scene. Despite lifesaving efforts, Mr. DiMillo died at the scene. Falmouth EMS transported Sgt. Conger to a hospital for treatment of injuries he sustained to his wrist when he fell during the confrontation.

Officer Theriault observed a can of pepper spray in Mr. DiMillo’s left hand, which he had not previously noticed because he had been focused on the knife in Mr. DiMillo’s right hand. Officer Theriault also located a folding knife in Mr. DiMillo’s right front pocket, and a collapsible baton tucked in his waistband. Officer Theriault removed these items and placed them on the roadway. He did not see where the knife went that was in Mr. DiMillo’s right hand when he fell to the ground.

Members of the Maine State Police Evidence Response Team processed the scene and collected evidence. In the roadway between Mr. DiMillo’s body and Sgt. Conger’s police vehicle, they found a green folding knife with the blade open, a collapsible baton, and a can of pepper spray as described by Officer Theriault. Two silver, fixed blade, double-edged knives were found on Mr. DiMillo’s person, strapped to his legs in sheaths. Another silver, fixed blade, double-edged knife of matching size and shape was found on the ground near the driveway to Mr. DiMillo’s residence. Two additional cans of pepper spray were found on Mr. DiMillo’s person.

³ Officer Theriault recalled firing two rounds and Sgt. Conger recalled firing two or three times. It was later determined that Officer Theriault fired a total of five rounds (the first round when Mr. DiMillo was advancing on Sgt. Conger and four rounds when both officers discharged their weapons at Mr. DiMillo), and Sgt. Conger fired four rounds.

Panel Members

Michael Alpert, President, Greater Bangor Area Branch NAACP
Debra Baeder, Ph.D. Clinical Director of Office of Behavioral Health, DHHS
David Bate, Esq.
Stephen Burlock, Esq., Assistant District Attorney (Retired)
John Chapman, Esq.
Jack Clements, Chief of Police, Saco
Rick Desjardins, Director, Maine Criminal Justice Academy
Sandra Slemmer, designee of Mark Flomenbaum, M.D., Ph.D., Chief Medical Examiner
Fernand Larochelle, Secretary
Brian MacMaster, Chief, Attorney General Investigations
Joel Merry, Sheriff, Sagadahoc County
Michael Sauschuck, Commissioner, Department of Public Safety
Francine Garland Stark, Executive Director, Maine Coalition to End Domestic Violence, Chair
Dan Tourtelotte, Maine State Law Enforcement Association
Vendean Vafiades, Esq., Vice Chair

Note: The individuals who serve on the Panel are appointed to bring their professional expertise to bear on discussions of these complex cases. Thus, a member of the Panel may know or have had contact with individuals who were involved in the case under review. In such situations, the member reports such affiliations to the Panel, and that information is recorded in the meeting minutes. If the Panel member determines he or she has a conflict of interest, the Panel member is recused from voting on the Panel's observations and recommendations regarding that case.