

JANET T. MILLS
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

March 5, 2018

Col. Robert A. Williams
Maine State Police
42 State House Station
Augusta, ME 04333

Mary Sabins, Town Manager
Vassalboro Police Department
P.O. Box 129
N. Vassalboro, ME 04962

Dear Col. Williams and Ms. Sabins:

We have completed our investigation and legal review of the incident on February 10, 2017, in Vassalboro, involving the use of deadly force by Vassalboro police chief Mark Brown, and Trooper Jeffrey Parks and Lieutenant Scott Ireland of the State Police. As you know, the use of deadly force by Tr. Parks and Lt. Ireland resulted in the gunshot deaths of Ambrosia Fagre and Kadhar Bailey, respectively. While Chief Brown firing his handgun at Mr. Kadhar resulted in no injury, his action nevertheless constituted deadly force under Maine law.

Factual Summary

At about 4:00 P.M. on February 10, 2017, Lt. Scott Ireland arrived home in Vassalboro. He was approached by a neighbor who notified him of a suspicious Dodge Durango parked further down the road. Lt. Ireland, who was wearing civilian clothes, donned his Maine State Police jacket and gun belt and proceeded down the road in his State Police vehicle. He observed the Durango backed into a turnaround. A single occupant sitting in the front passenger seat was later identified as Ambrosia Fagre, 18. Lt. Ireland saw that Ms. Fagre was slumped over and appeared unconscious. He feared that she was suffering from carbon monoxide poisoning. He knocked on the window, but only after he pounded on the window did Ms. Fagre react. After getting Ms. Fagre to open the car door, Lt. Ireland learned that she was not suffering from carbon monoxide poisoning but was very lethargic and, in his words, "out of it." Ms. Fagre told Lt. Ireland that she was waiting for her boyfriend to come back. Lt. Ireland was joined by Sgt. Galen Estes of the Kennebec County Sheriff's Office, who was in the area investigating a burglary. Ms. Fagre alternately told the officers that her boyfriend's name was Nick, Brian, and Hunter, and that she did not know his last name but that he lived in an apartment in Augusta.

Lt. Ireland saw footprints in the snow leading in the direction of Richard "Dicky" Browne's house and began calling nearby relatives of Mr. Browne after Mr. Browne did not answer calls. Robert Browne, a nephew, checked on Dicky Browne at Lt. Ireland's urging and called Lt. Ireland to alert him that Dicky Browne had been tied up at gunpoint and his house ransacked. Lt. Ireland headed to Mr. Browne's house to gather more information; he asked Sgt. Estes to stay with Ms. Fagre. After Lt. Ireland left, Mark Brown, the Vassalboro police chief, arrived at the Dodge Durango. Chief Brown learned that there were drugs in the car and that Ms. Fagre had two ring boxes in the pocket of her hooded sweatshirt that she said her boyfriend told her to hold. Chief Brown remained with Ms. Fagre at the Dodge Durango while Sgt. Estes moved police vehicles out of the way so that a local resident could pass by.

Lt. Ireland learned from Mr. Browne that a man, later identified as Kadhar Bailey, 25, knocked on his door hours earlier and offered to shovel his roof for \$100. Mr. Browne declined the offer and watched as Mr. Bailey walked away. Moments later, Mr. Browne heard noise coming from his garage. In the garage, he encountered Mr. Bailey, who held him at gunpoint with a handgun and ordered him back into the house. Mr. Bailey tied Mr. Browne's hands and feet and rolled or kicked him into the basement. Mr. Bailey spent the next couple of hours ransacking Mr. Browne's house while intermittently checking on Mr. Browne and threatening to kill him. Mr. Bailey left Mr. Browne's residence in Mr. Browne's pickup truck.

Lt. Ireland checked the surrounding area and found Mr. Browne's truck on a nearby snowmobile trail, as well as footprints in the snow. Lt. Ireland's knowledge of the area led him to believe that the footprints would lead back to the Dodge Durango. Lt. Ireland, having been kept abreast by radio of the location of other officers responding to the situation, notified Chief Brown, who he knew was at the Durango with Ms. Fagre, of Mr. Bailey's description and that Mr. Bailey was headed his way and was armed. Moments later, Chief Brown saw Mr. Bailey approaching him with what appeared to be a handgun in his hand. Chief Brown, who was standing at the passenger front side of the Durango, pointed his handgun at Mr. Bailey and ordered him to drop the weapon, but Mr. Bailey continued advancing. Chief Brown made his way around to the front of the Durango to the driver's side as Mr. Bailey walked up to the passenger's side. Mr. Bailey extended his arm over the hood of the Durango toward Chief Brown with what appeared to be a handgun and Chief Brown fired his own handgun at Mr. Bailey before finding cover behind a snowbank. Chief Brown heard what he believed to be a gunshot while he was behind the snowbank. Mr. Bailey, seemingly uninjured, got into the Durango from the passenger side and made his way to the driver's side. Chief Brown fired at Mr. Bailey again as Mr. Bailey put the Durango in drive and accelerated from where it had been parked.

In the meantime, Trooper Jeffrey Parks arrived and came to an abrupt stop in the road when he heard gunfire and observed Chief Brown moving toward the snowbank. Lt. Ireland, having concluded his interview with Mr. Browne, was approaching the same area, first as a passenger in the cruiser of another trooper who responded to the situation and then on foot. Trooper Parks, in response to the sound of gunfire, got out of his cruiser to seek cover. At the same time, Mr. Bailey drove the Durango out of the parking spot and rapidly accelerated towards Trooper Parks and his now stationary cruiser. Trooper Parks moved from behind his cruiser and fired several rounds from his handgun at the Durango, which continued to accelerate and drive towards him. The Dodge Durango struck Trooper Parks' cruiser with sufficient force to cause airbag deployment

and move the cruiser back about 50 feet. Trooper Parks told detectives that he was unaware of Ms. Fagre's presence in the front seat of the Durango nor did he see her. The investigation determined that one of the rounds he fired at Mr. Bailey struck Ms. Fagre. A forensic examination to determine the trajectory of the round that struck Ms. Fagre showed that she was slumped over in the seat and would not have been visible to Trooper Parks when he fired the rounds at the Durango.

After the Durango crashed into Trooper Parks' cruiser, Lt. Ireland, armed with a patrol rifle, approached the driver's side of the Durango. He observed Mr. Bailey with his left hand out the window. He gave commands to Mr. Bailey to show both his hands. Mr. Bailey pulled his left hand into the car and made a series of quick movements toward the center console of the Durango while twice looking back at Lt. Ireland. Lt. Ireland fired one round from his rifle, which struck Mr. Bailey in the neck. Mr. Bailey died at the scene. Ms. Fagre, gravely injured, was taken to a hospital where she later died from a single gunshot wound.

Discussion and Legal Analysis

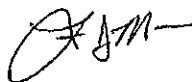
By law, the Attorney General's Office has exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer, who, while acting in the performance of the officer's duties, uses deadly force. The detectives who conduct the investigation of these incidents are independent of any other law enforcement agency. The purpose of the criminal investigation is to determine whether self-defense, including the defense of others, was reasonably generated by the facts so as to preclude criminal prosecution of an officer who used deadly force. Any such prosecution would require the State to disprove self-defense or the defense of others beyond a reasonable doubt. The investigation did not include an analysis of whether any personnel action might be warranted, of whether the use of deadly force could have been averted, or of whether there might be civil liability. Indeed, state law provides that the fact that conduct may be justifiable under the Criminal Code does not abolish or impair any other remedy available under the law.

Under Maine law, for any person, 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 person must reasonably believe that deadly force is imminently threatened against that person or another, and, second, the person must reasonably believe that deadly force is necessary to counter that imminent threat. Further, whether the use of force by a law enforcement officer is reasonable is based on the totality of the particular circumstances and 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 given situation. The legal analysis requires careful attention to the facts and circumstances of each case, including the severity of the crime threatened or committed and whether the suspect poses an immediate threat to the safety of others.

CONCLUSION

It is our determination that at the moment each officer used deadly force in the rapidly evolving sequence of events, each reasonably believed that unlawful deadly force was imminently threatened against the officer or another, and it was reasonable for each officer to use deadly force to counter the threat. Each officer acted in self-defense. While certainly tragic, the unintended death of Ms. Fagre does not affect the legal analysis of whether Trooper Parks acted reasonably by firing at Mr. Bailey.

Sincerely,



LISA J. MARCHESE
Deputy Attorney General
Chief, Criminal Division