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July 19, 2019

Colonel John Cote
Chief of the Maine State Police
42 State House Station
Augusta, ME 04333

Dear Colonel Cote:

We have completed our investigation and legal review of the incident on June 7, 2017, involving the use of deadly force by Sergeants Peter Michaud and Joshua Haines and Trooper David Coflesky that resulted in the death of Mark Ellis, 54, at his home in Orrington.

Factual Summary

On June 6, 2017, at around 12:30 P.M., Mark Ellis called 911 and said he wanted to kill the police officer who arrested him and "tagged" him with a "laser." Mr. Ellis was referring to an incident on February 6, 2017, when a Penobscot County deputy sheriff took Mr. Ellis into protective custody.¹ At the time, the deputy sheriff used pepper spray and a Taser to overcome Mr. Ellis' physical resistance. Mr. Ellis terminated the call and the dispatcher called him back. Mr. Ellis said that he was going to "kill a cop." He called 911 two more times. He repeated that he was going to kill a police officer and, during the fourth and final call, he gave an ultimatum of sending an officer to his residence or he would "wreak havoc on your station."²

Several deputies went to the Ellis residence. They also placed a school and the Orrington Town Office on lockdown, given the proximity of the locations to the Orrington Public Safety Building. Mr. Ellis' wife left the residence and drove to the Public Safety Building. Deputies learned that Ms. Ellis previously arrived home from running errands and found her husband agitated. He told her he called the police and when the police

¹ If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons, the law enforcement officer may take the person into protective custody. See 34-B M.R.S. § 3862.

² "Station" was believed at the time to be a reference to the Orrington Public Safety Building.

arrived, he was going to kill them all. He instructed her to leave the residence with their dog. Deputies also learned that Mr. Ellis had several firearms in the residence, including high-powered rifles. Members of the State Police Tactical Team, as well as the State Police Crisis Negotiation Team, arrived outside the Ellis residence. In the meantime, the Sheriff's Office obtained warrants authorizing Mr. Ellis' arrest and entry into the Ellis residence.

Crisis negotiators attempted over a period of several hours, without success, to talk with Mr. Ellis. The attempts included 76 telephone calls, the use of a public-address system, and making loud noises outside the residence to attract his attention. About eight hours into the standoff, an officer informed Mr. Ellis via the PA system that he was under arrest, and, about an hour later, officers introduced tear gas into the residence. Mr. Ellis, however, remained inside the residence until after seven more telephone calls when he opened a door, displayed a middle finger at the officers, yelled obscenities, and slammed the door shut. Shortly after, Sgt. Tyler Stevenson, the commander of the Tactical Team who was about 15 yards away inside an armored vehicle with other officers, saw Mr. Ellis crouch in front of a window, point a rifle at the armored vehicle, and fire the weapon. Sgt. Stevenson heard the round strike the armored vehicle around the windshield. Immediately following the shot fired by Mr. Ellis, Sgt. Haines fired a shot at Mr. Ellis. When Mr. Ellis fired a second shot, Sgt. Michaud and Trooper Coflesky each fired a single shot at Mr. Ellis, while Sgt. Haines fired a second shot. Mr. Ellis fell out of sight of the window. After several attempts to contact him, officers entered the residence where they found Mr. Ellis deceased.

The investigation disclosed that Mr. Ellis fired the round that struck the armored vehicle slightly above the windshield from an M1 carbine from about 41 feet away. Sgt. Michaud and Sgt. Haines were about 450 feet away when they fired at Mr. Ellis, and Trooper Coflesky was about 500 feet away. The standoff lasted for about 11 hours into the early morning hours of June 7, 2017.

A postmortem examination performed by Dr. Margaret Greenwald from the Office of Chief Medical Examiner determined that Mr. Ellis suffered three gunshot wounds. The cause of death was a gunshot wound to the chest. A toxicology screen indicated that Mr. Ellis tested positive for marijuana; a very high level of Alprazolam (a benzodiazepine commonly known as Xanax prescribed to Mr. Ellis for the short-term relief of anxiety), and Cyclobenzaprine, a muscle relaxant and a depressant.

Discussion and Legal Analysis

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.³ The detectives who conduct the investigation of these incidents are independent of any other law enforcement agency. The purpose of the criminal investigation of the incident in Orrington on June 7, 2017, was to determine the legal justification of the use of deadly force by Sgt. Haines, Sgt. Michaud, and Trp. Coflesky. The investigation did not include an analysis of whether any personnel

³ 5 M.R.S. § 200-A

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.

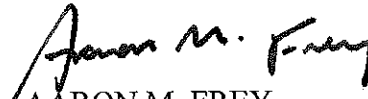
Under Maine law, a law enforcement officer is justified in using deadly force in self-defense or the defense of others when the officer reasonably believes that deadly force is imminently threatened against the officer or against someone else and the officer reasonably believes that deadly force is necessary to counter that imminent threat, or when a law enforcement officer is attempting to make an arrest and the officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force and the officer has made reasonable efforts to advise the person that he is a law enforcement officer attempting to make an arrest and the officer has reasonable grounds to believe that the person is aware of this advice.⁴

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 when Sgt. Haines, Sgt. Michaud, and Trp. Coflesky fired at Mr. Ellis, they reasonably believed that Mr. Ellis had used unlawful deadly force and that he was imminently threatening further unlawful deadly force against law enforcement officers on scene. After an approximate 11-hour stand-off and multiple attempts through phone calls and a public-address system, officers used an armored vehicle to approach the house to arrest Mr. Ellis. Mr. Ellis fired at the armored vehicle, which caused Sgt. Michaud, Sgt. Haines, and Trp. Coflesky to believe it necessary to use deadly force to protect themselves and others within the range of Mr. Ellis' firearm from serious bodily injury or death. All the facts and circumstances point to the conclusion that Sgt. Michaud, Sgt. Haines, and Trp. Coflesky acted in self-defense and the defense of others.

Sincerely,


AARON M. FREY
Attorney General

⁴ 17-A M.R.S. §107 (2) (A) & (B)(1)