

AARON M. FREY  
ATTORNEY GENERAL



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

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

125 PRESUMPSCOT ST., SUITE 26  
PORTLAND, MAINE 04103  
TEL: (207) 822-0260  
FAX: (207) 822-0259

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

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

December 11, 2020

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 May 14, 2018, involving the use of deadly force by Corporal James MacDonald, which resulted in the death of William Derick, 54, of Wales.

#### Factual Summary

On Sunday, May 13, 2018, at 6:28 PM, a Waterville resident called 911 and reported that Carrie Derick of Wales called him and 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 Ms. Derick was at the caller's grandmother's house, which was nearby. According to the caller, Ms. Derick told him that Mr. Derick had been "off his rocker" for a few days and had "snapped," ordering her out of the house after threatening to kill her. Ms. Derick told the caller that she did not want to call the police because she was afraid that Mr. Derick would shoot at anyone who showed up at the Derick residence. Ms. Derick also told him that Mr. Derick was armed with a rifle or shotgun, despite his being prohibited from possessing firearms.

At 6:46 PM the Regional Communications Center (RCC) in Gray dispatched State Police Corporal Ricci Cote to investigate. At 7:07 PM, Cpl. Cote met with and interviewed Ms. Derick. Ms. Derick told him that her husband suffered from physical and mental health issues. She said that he had been acting strangely and today he retrieved a rifle or shotgun. He showed her that it was loaded, pointed it at her, and told her he was going to kill her. Ms. Derick told Cpl. Cote that her husband then ordered her out of the house and shot at her as she fled. In addition, Cpl. Cote learned that a nearby neighbor had called the State Police to report that he heard someone yelling and breaking glass in the area. Cpl. 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. Cpl. Cote requested further assistance from Trooper Jon Russell, a K-9 handler, and Trooper Paul Casey, a member of 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.

Tr. Casey in turn contacted Sergeant Tyler Stevenson, Commander of the State Police Tactical Team, and briefed him on the situation. Sgt. Stevenson 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. Tr. Casey, along with Tr. Russell and officers from other agencies, moved into positions around the perimeter of Mr. Derick's residence in an effort to contain him because he could be seen moving in and outside of his house. Cpl. Cote parked at the end of the driveway of the Derick residence 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 and saying he was not coming out. He told Cpl. Cote to get off his property and leave him alone. Tr. Casey relayed this information to Sgt. Stevenson, who thereafter activated the Tactical Team to respond and take charge of the situation. The State Police Crisis Negotiation Team (CNT) was also notified and responded.

Sgt. Stevenson arrived at the scene at 10:40 PM. As additional team members arrived, they were assigned to positions around the perimeter. Additional team members and CNT negotiators were assigned to the LENCO, an armored vehicle.<sup>1</sup> At approximately 11:00 PM, James MacDonald, another Tactical Team member, arrived on scene. He was briefed on the situation and assigned to a position in a field across the street about 140 yards from the front of the Derick residence. He was armed with a precision rifle and night vision scope.

By 1:21 AM on May 14th, Cpl. Cote had obtained an arrest warrant for Mr. Derick for the crimes of domestic violence criminal threatening with a dangerous weapon and domestic violence reckless conduct with a dangerous weapon. He also obtained a search warrant for the Derick residence. At 1:56 AM, a team member drove the LENCO to the end of the driveway, used a spotlight to illuminate the front of the house, and activated the blue emergency lights. At 2:02 AM, Mr. Derick said he would shoot the first [expletive] he sees. He said that he would not back down and told the police to leave. At 2:03 AM, Mr. Derick appeared at the front door with a long gun. He appeared to work the action on the gun and then pointed it toward the LENCO before moving further back into the house. Trooper David Powser, a negotiator, attempted to contact Mr. Derick. He advised Mr. Derick on multiple occasions via a PA system not come to the door with a gun and to put the gun on the ground.

At 2:49 AM, Detective Gregory Roy, Assistant Commander of the Tactical Team, who was inside the LENCO, decided to move the LENCO away from the house in an effort to de-escalate the situation. However, unsuccessful in persuading Mr. Derick to come out of the house, the LENCO returned to the end of the driveway at 3:17 AM. A minute later, Mr. Derick was observed standing at the front bay window and yelling, "I don't think so!" Shortly thereafter, officers observed Mr. Derick at the bay window holding a camouflaged-colored long gun. He punched out the window with the gun and used the barrel to sweep away the glass. He pointed the weapon at the LENCO, and alternately disappeared from view below the sill of the

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<sup>1</sup> The LENCO is an armored response and rescue vehicle widely used by special police units in tactical roles. While constructed to be bullet resistant, the vehicle is not bulletproof.

window and popping his head up momentarily. He was repeatedly ordered to drop his gun. At one point he moved back over to the door without the gun and began waving his arms and giving the middle finger gesture to the Lenco. He then returned to the bay window, picked up the gun, and pointed the barrel directly at the Lenco. Det. Roy, from inside the Lenco, radioed team members on the perimeter that Mr. Derick was pointing his gun at them. At this point the Lenco was positioned about 15 yards from the house.

At 3:21 AM, Cpl. MacDonald heard Det. Roy report repeatedly that Mr. Derick was pointing his gun at the Lenco. He also heard negotiators 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 Lenco. Cpl. MacDonald fired one shot from his position in the field, which was later determined to have struck Mr. Derick in the head and killed him. Cpl. 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 was also concerned for the welfare of the troopers on the perimeter, and others in nearby residences within range.

An autopsy and postmortem examination by Dr. Mark Flomenbaum, the Chief Medical Examiner, 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 Tr. MacDonald's position in the field included his rifle, remaining cartridges, and one spent cartridge casing.

The image below on the left is the type of Daisy Powerline .177 pellet rifle brandished by Mr. Derick, and on the right examples of two authentic firearms:



Daisy Powerline

Ruger 10/22

Browning Bar MK3

Forensic examination by the State Police Crime lab established that the cartridge casing from the field was fired from Tr. MacDonald's rifle. The examination also determined that a fragment of a bullet jacket recovered from Mr. Derick's body was fired from Tr. MacDonald's rifle.

### Discussion and Legal Analysis

The Office of the Attorney General 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.<sup>2</sup> The detectives who conduct these investigations are independent of any other law enforcement agency. The limited purpose of the criminal investigation of the incident in Wales on May 14, 2018 was to determine whether Cpl. MacDonald was legally justified in using deadly force when he shot Mr. Derick. 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 whether there might be civil liability. Indeed, state law provides that the fact that conduct may be justifiable under the Maine law does not abolish or impair any other remedy available under the law.

Under Maine law, a law enforcement officer is authorized to use 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.<sup>3</sup> 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 Cpl. MacDonald shot Mr. Derick, he reasonably believed that Mr. Derick's actions constituted an imminent threat of unlawful deadly force against troopers housed in the LENCO and others situated within range. Despite being repeatedly told to put down what reasonably appeared to be a firearm, Mr. Derick continued to threaten to shoot officers and continued to point his weapon at the LENCO and officers on the perimeter. At the time Cpl. MacDonald shot Mr. Derick, Mr. Derick had placed a long gun on

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<sup>2</sup> 5 M.R.S. § 200-A

<sup>3</sup> 17-A M.R.S. § 107 (2) (A) & (B)(1)

the windowsill and pointed the gun directly at the LENCO, which was occupied by several officers. All the facts and circumstances point to the conclusion that Cpl. MacDonald acted in self-defense and the defense of others.

Sincerely,

A handwritten signature in blue ink that reads "Aaron M. Frey". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

AARON M. FREY  
Attorney General