



OFFICE OF THE ATTORNEY GENERAL

January 11, 2016

Report of the Attorney General on the Use of Deadly Force by Bangor Police Officers on February 8, 2015

Finding: Officers fired in self defense

Synopsis

On February 8, 2015, two Bangor police officers, Brian Smith and Dennis Townsend, responding to a reported hostage situation at a residence on Union Street, fired their weapons into the residence after being fired at themselves. No one was injured as a result of the gunfire.

Discussion

The Attorney General has exclusive responsibility for the direction and control of the criminal investigation of a law enforcement officer, who, while acting in the performance of the officer's duties, uses deadly force.¹ Deadly force, as defined by law, includes discharging a firearm in the direction of another person unless the discharge is that of a less-than-lethal munition.² The detectives in the Office of the Attorney General who investigate these incidents are independent of and unaffiliated with any other law enforcement agency. The purpose of the criminal investigation of the incident in Bangor on February 8, 2015, was to determine whether self-defense, including the defense of others, was reasonably generated by the facts so as to preclude criminal prosecution of the officers who discharged their weapons. 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.

The standard for law enforcement officers for the use of self defense is the same legal standard for private citizens. In order for any person to legally use deadly force in self-defense

¹ 5 M.R.S. § 200-A.

² 17-A M.R.S. § 2(8)

or in defense of a third party, two requirements must be met. First, the person must actually and reasonably believe that deadly force is imminently threatened against the person or against someone else; and, second, the person must actually and 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 must be based on the totality of the particular circumstances and must be 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.

Facts

In the early morning hours of February 8, 2015, Nicholas Condon, 27, drove from his residence in Portland to Bangor, armed with a 12 gauge shotgun. Shortly before 7 a.m., he purchased ammunition for the shotgun, as well as duct tape, a package of mini pry bars, a folding knife, and a propane torch kit from a retail store in Bangor.

About three weeks previously, Mr. Condon's girlfriend ended a three-year relationship with Mr. Condon and he moved to Portland. Before the relationship ended, Mr. Condon and his girlfriend had lived together in Bangor. Around the same time the relationship ended, another man the girlfriend had been dating moved into the Bangor residence with her. Mr. Condon became aware of this arrangement.

On February 8th, a short time after making the purchases at the Bangor retail store, Mr. Condon arrived at his former girlfriend's residence on Union Street. He walked around the house, stopping at windows to look inside. After observing the former girlfriend and her new boyfriend in bed together, Mr. Condon walked back to his car and retrieved the shotgun he had brought with him from Portland. He went back to the house, forced a door open, and went in. Mr. Condon walked into the bedroom where the man and woman were sleeping and banged on the walls to wake them. The man attempted to get out of the bed but stopped when Mr. Condon fired the shotgun into the ceiling.³ Mr. Condon threatened to tie up the man and woman and use a blowtorch to burn them.⁴ Over the next hour or so, while holding them at bay with the shotgun, Mr. Condon made more threats to kill both the man and the woman. He ordered the woman into the bathroom and instructed the man to remain in a kneeling position in the bedroom. He instructed the woman to call 911. He told her that he wanted to die but it was against his religion to take his own life, so he would have the police kill him.

At 8:11 A.M., the woman called 911 and reported that Mr. Condon was at her residence with a loaded shotgun, that he was threatening to use the shotgun, and that he was being

³ Mr. Condon later admitted to detectives that he fired the shotgun into the ceiling. He said he also fired a round at a television set, although the investigation determined that this second discharge was much later in what would become a standoff of several hours.

⁴ Mr. Condon later told detectives that he initially thought about using the blowtorch to disfigure the boyfriend and make him suffer.

physically abusive. During the conversation with the 911 operator, Mr. Condon shouted to the 911 operator, "You make any moves towards this house, anybody comes in, I'm going to blow his [expletive] head off."⁵ Mr. Condon refused to give the 911 operator his name and told her that she could get it from his dental records.

Several Bangor police officers were dispatched to the Union Street residence. At about 8:30 A.M., as officers continued to arrive outside the residence, they heard a gunshot within the residence.⁶ Officer Brian Smith, with a battering ram, moved quickly towards the front door of the residence, followed by Officers Dennis Townsend and Daniel Sanborn. Intending to force their way into the residence, the three officers started up a small set of steps toward the open screen door and the closed metal front door of the house. Two more gunshots came from within the residence, the second of which hit the metal door. The shotgun pellets that hit the metal door pushed the metal outward and partially penetrated the door. Officer Smith was just reaching the top step. He retreated in a backwards motion, stumbled, and nearly fell. As he regained his balance, he checked his chest to determine if he had been shot and fired towards the metal door. Officer Townsend was a few feet behind Officer Smith at the bottom of the steps. Believing that Officer Smith had been shot, he fired toward the metal door. Both Officers Smith and Townsend were quickly guided to positions of safety by Officer Sanborn.⁷

About five minutes later, the woman inside the house called 911 and reported that Mr. Condon was going to let her leave the house through a window. Mr. Condon can be heard telling the woman to tell the dispatcher that if the police try to shoot him, he will shoot the woman's boyfriend. Mr. Condon then told the dispatcher that once the woman was outside the house, anyone who wanted to talk with him could call him. The woman left the house through a window. Officers then attempted to negotiate the release of the woman's boyfriend. Slightly more than an hour later, the boyfriend left the house through the window. Over the next three-and-a-half hours, officers attempted to persuade Mr. Condon to come out of the house and surrender. He steadfastly refused, stating that he would come out shooting when his parents arrived. At about 1:20 P.M., after tear gas was introduced into the house, Mr. Condon told the police that he was draining home heating oil into the basement and would "blow the place."⁸ About a half hour later, however, Mr. Condon walked outside the house with his middle fingers raised and talking on a cell phone. He refused to submit to custody and shouted repeatedly for

⁵ Dispatch logs show that at 8:13 A.M., the dispatcher informed responding officers that a "male got on the phone, said if anyone goes near the residence he is going to blow her head off."

⁶ It was later determined that the shot heard by the officers was Mr. Condon discharging a shotgun at the television in the residence.

⁷ Each officer was armed with a patrol rifle. Officer Smith recalled firing two rounds, and Officer Townsend about 10 rounds. The investigation, which included ballistic testing of 12 spent rifle casings recovered from the scene, determined that Officer Smith fired at least one round and Officer Townsend at least 11 rounds.

⁸ Later investigation determined that the line to the oil tank in the basement was in fact broken off, resulting in several gallons of fuel oil draining onto the floor.

the police to shoot him. He was struck in the leg with a foam baton round⁹ that momentarily immobilized him and provided an opportunity for several officers to take him into custody.

Mr. Condon was later charged with two counts of kidnapping, burglary with a firearm, two counts of criminal threatening with a dangerous weapon, reckless conduct with a firearm, possession of sexually explicit material.¹⁰ He was also charged with the civil offense of creating a police standoff. In a plea agreement with the District Attorney's Office on October 28, 2015, that encompassed the eight charges, Mr. Condon was sentenced to 27 years incarceration with all but 12 years suspended, five years probation, and nearly \$8,000 in restitution to his former girlfriend.

Conclusion

Attorney General Janet T. Mills has concluded that at the time Officers Smith and Townsend discharged their weapons, each of them reasonably believed that unlawful deadly force was being used against them. It was reasonable for each officer to believe it necessary to use deadly force to protect himself and each other from deadly force, as well as Officer Sanborn and any other persons within range of Mr. Condon's weapon. The Attorney General's conclusions are based on an extensive forensic investigation, on interviews with numerous individuals, and on a thorough review of all evidence made available from any source. All facts point to the conclusion that the officers in this case acted in self-defense.

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⁹ A foam baton is a less-than-lethal impact munition consisting of foam rubber and designed to have a disabling effect without causing serious injury.

¹⁰ A search warrant was executed on Mr. Condon's cellular telephone for evidence related to the standoff. While analyzing the evidence, officers discovered child pornography. An additional new search warrant was executed for Mr. Condon's laptop computer where more child pornography was found.