



## OFFICE OF THE ATTORNEY GENERAL

January 11, 2016

**Report of the Attorney General on the Use of Deadly Force  
by Aroostook County Deputy Sheriff and  
State Trooper in Smyrna on February 10, 2015**  
*Finding: Officers fired in self defense*

### Synopsis

On February 10, 2015, Kenneth W. Kreyssig, 61, of Smyrna was shot and killed in Smyrna by Aroostook County Deputy Sheriff Stewart Kennedy and State Police Sergeant Chadwick Fuller.

### Discussion

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>1</sup> The detectives in the Office of the Attorney General who conduct the investigation of such incidents are independent of and unaffiliated with any other law enforcement agency. The purpose of the criminal investigation of the incident in Smyrna on February 10, 2015, which resulted in Mr. Kreyssig's death, 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 shot Mr. Kreyssig. 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.

In order for any person, including a law enforcement officer, to legally use deadly force in self-defense 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

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<sup>1</sup> 5 M.R.S. § 200-A.

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

During the afternoon of Sunday, February 9, 2015, a waitress at a restaurant in Smyrna reported to the Aroostook County Sheriff's Office that Kenneth Kreyssig and his mother were at the restaurant when Mr. Kreyssig became disruptive and threw a glass of water on his mother. Mr. Kreyssig left the restaurant by himself and drove to a friend's house in Smyrna. He told the friend about the incident at the restaurant, and the friend suggested that it was likely the police would be looking for him. Mr. Kreyssig told the friend that he would not go with the police, that he would rather go into the woods and "be done with it."

A deputy sheriff met with the mother at the restaurant, who said that Mr. Kreyssig lived with her in Smyrna, that he suffered from post traumatic stress disorder for which he was not taking medication, that he had been arrested in the past for assaulting her, that he smoked marijuana, and that he had access to numerous firearms in the home. The deputy relayed the information to two other deputy sheriffs, who spoke with Mr. Kreyssig a short time later at the friend's home. One of the deputies was Stewart Kennedy. In response to a suggestion by Deputy Kennedy that Mr. Kreyssig spend the night away from his mother's house, Mr. Kreyssig responded that if he did not have a place to live, he may as well kill himself. Nevertheless, Mr. Kreyssig agreed to spend the night at the friend's house. Mr. Kreyssig later expressed further suicidal ideations to the friend.

Late in the afternoon on Monday, February 10, 2015, Mr. Kreyssig, appearing emotionally distraught, visited the Smyrna Town Office. He inquired about the ownership of the residence where he and his mother resided and, when told that only his mother's name appeared on the deed as owner, he became very emotional and said that no one cared whether he would have a place to live after his mother died. He said he was "just a throwaway," commenting that his family threw him away, the government threw him away, and "I should just shoot myself." Mr. Kreyssig left the town office and arrived home at about 4:30 p.m. At the residence, he encountered his brother who had brought groceries to the house, but the two men did not engage in conversation. The brother left and when he arrived at his home about two hours later he noticed a missed call from a cousin in Florida. He called the cousin who told him that Mr. Kreyssig had called her earlier, was very distraught, and told her that he was going to shoot himself. The brother called the Sheriff's Office, related the substance of the cousin's phone call and the fact that there were firearms in the Kreyssig residence and requested a wellbeing check on his mother. The call was assigned to Deputy Kennedy.

Deputy Kennedy contacted a state trooper, John Darcy, and briefed him on the situation, and the pair drove separately to Mr. Kreyssig's residence. Sergeant Chadwick Fuller of the State

Police was also briefed and drove separately to the residence. The three officers each arrived at the residence at about 7:15 p.m. and parked their cruisers on the side of the road. They saw a person Deputy Kennedy believed to be Mr. Kreyssig in an upstairs window. Deputy Kennedy and Trooper Darcy approached the residence on foot while Sergeant Fuller remained at the road side near the parked cruisers. At the same time, Mr. Kreyssig called 911 to report three cars with their lights off parked on the road outside his residence. While the dispatcher was patching the call through to Sergeant Fuller, Mr. Kreyssig's mother invited Deputy Kennedy and Trooper Darcy inside the residence. She indicated that Mr. Kreyssig was upstairs in the house.

Deputy Kennedy encountered Mr. Kreyssig as he came down a darkened stairwell. He reminded Mr. Kreyssig that they had met the day before. Mr. Kreyssig, who seemed annoyed, demanded to know why there were cars parked out in front of the residence. Deputy Kennedy became suspicious when it appeared to him that Mr. Kreyssig was concealing something in his left hand, and yelled "show me your hand." Mr. Kreyssig ignored the command and continued down the stairwell. Mr. Kreyssig stopped about ten feet from Deputy Kennedy, shouted some obscenities, and started back up the stairwell. Deputy Kennedy followed Mr. Kreyssig. At this time, Trooper Darcy was in the kitchen and Sgt. Fuller had entered the residence and started toward the stairs.

Deputy Kennedy was only a step behind Mr. Kreyssig when he reached the upper half of the narrow stairway. Deputy Kennedy heard a loud pop and smelled a burning or smoky odor. He also saw that Mr. Kreyssig was holding a dark grey object close to his own face. As Mr. Kreyssig said, "[Expletive], I missed," Deputy Kennedy realized that Mr. Kreyssig had a gun in his hand and had discharged it. Deputy Kennedy ordered him to drop the gun to no avail. Sergeant Fuller heard the gunshot, heard Deputy Kennedy shout "drop the gun," and started up the stairwell. Fearing that Mr. Kreyssig would shoot him, Deputy Kennedy stayed as close to him as possible in an attempt to grab the gun or knock it out of Mr. Kreyssig's hand. However, those attempts failed and once at top of the stairs, Mr. Kreyssig, still in possession of the gun, assumed a crouching position at which point Deputy Kennedy shot him twice. Sergeant Fuller, on his way up the stairs, heard the two gunshots and, based upon his observations when he reached the top of the stairs, he thought Deputy Kennedy had been shot. Mr. Kreyssig was about 4-6 feet from Sergeant Fuller when he turned his attention to Sergeant Fuller as if to engage him. In response, Sergeant Fuller shot Mr. Kreyssig.<sup>2</sup> In Mr. Kreyssig's left hand was a revolver.<sup>3</sup> Four minutes had elapsed from the time the three officers arrived at the residence.

Emergency medical technicians summoned to the residence determined that Mr. Kreyssig was deceased. The next day, a postmortem examination and autopsy performed by Dr. Mark Flomenbaum, the state's chief medical examiner, concluded that Mr. Kreyssig died from three gunshot wounds. Toxicology testing showed the presence of marijuana and Sertraline, an antidepressant, in Mr. Kreyssig's body.

### Conclusion

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<sup>2</sup> Deputy Kennedy discharged two rounds, and Sergeant Fuller a single round.

<sup>3</sup> The gun was a .357 magnum five-shot revolver containing three live rounds and two spent casings.

Attorney General Janet T. Mills has concluded that at the time Deputy Kennedy and Sgt. Fuller shot Mr. Kreyssig, each of them reasonably believed that unlawful deadly force was imminently threatened 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. 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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