



OFFICE OF THE ATTORNEY GENERAL

March 22, 2016

Report of the Attorney General on the Use of Deadly Force by Bridgton Police Officer on September 23, 2015 in Naples

Synopsis

On the night of September 23, 2015, in Naples, Bridgton police officer Todd Smolinsky shot at a vehicle being operated by Melissa Penpraese, 45, of Naples, in order to disable the vehicle. Neither Ms. Penpraese nor any other person was injured.

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.¹ 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 Naples on September 23, 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 Officer Smolinsky. 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 conduct determined to be permissible under the Criminal Code does not abolish or impair any other remedy available under the law.

Maine law defines deadly force to include the discharge of a firearm in the direction of another person or at a moving vehicle. 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 person or against someone else; and, second, the person must

¹ 5 M.R.S. § 200-A.

actually and reasonably believe that deadly force is necessary to counter that imminent threat. Further, whether the use of deadly 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

At about 9:20 p.m. on September 23, 2015, Bridgton police officer Todd Smolinsky was on patrol and engaged in activity that took him into the neighboring town of Naples. He was in uniform and driving a marked police cruiser. He saw a vehicle traveling on Route 302 at a high rate of speed, and clocked its speed with radar at 72 M.P.H. in a 55 M.P.H. zone. He stopped the vehicle and approached the driver, a woman later identified as Melissa Penpraese of Naples. She was the sole occupant of the vehicle. Upon reaching the open driver's window, Officer Smolinsky immediately smelled liquor and further observations led him to believe that the woman was under the influence of intoxicating liquor and, possibly, drugs. The woman was unable to produce a driver's license and gave Officer Smolinsky what turned out to be a false name and date of birth. While Officer Smolinsky was communicating with dispatch from his cruiser, the woman drove off. Officer Smolinsky, with emergency lights already activated, gave chase. The woman refused to stop. While the initial speed of the chase was about 65 M.P.H., the woman slowed down but drove to the left of the center of the road, at times driving more in the oncoming travel lane than in her travel lane.

After a few minutes, the woman drove her vehicle to the side of the road as if to stop. However, she did not stop; she turned onto the Lambs Mill Road. She continued to drive "all over the road" in an erratic fashion. When she came to a vehicle in front of her, she passed it on the right in a no passing zone. Thereafter, she made several turns onto various roadways, failing each time to signal, and ignoring at least one stop sign. Officer Smolinsky was not familiar with the area and radioed street sign information to dispatch during the pursuit. The woman continued to operate the vehicle erratically and at one point threw something out the driver's window. She continued onto the Accomac Road, a dirt roadway, and at several points during the chase it appeared that her vehicle would leave the roadway due to its erratic operation. Officer Smolinsky became increasingly concerned about the safety of other motorists traveling towards the pursuit, and concerned that the woman's car would go off the road and strike a tree.

Eventually, the woman lost control of her vehicle and it slid sideways on the road towards a stand of trees. As Officer Smolinsky approached, the woman backed up and struck his cruiser. The woman drove forward and stopped. Officer Smolinsky got out of his cruiser with his duty weapon drawn and shouted commands for the woman to get out of the vehicle as he was approached it. He was only a foot from the side of the vehicle when it began to accelerate quickly forward with the rear of the vehicle swerving. The officer shot once at the rear left tire in attempt to disable the vehicle and stop the woman from driving off. Despite this attempt to stop the vehicle, the woman drove off. Officer Smolinsky returned to his cruiser and gave chase. By the time he caught up with the vehicle again, it was stationary and unoccupied. Officer

Smolinsky went into the woods and saw the woman some 60 feet away, but had to return to his cruiser to secure it and retrieve a flashlight. When he returned to the wooded area, he was unable to locate the woman.

Further investigation determined that the woman was Melissa Penraese. Eventually located, Ms. Penraese was charged with reckless conduct with a dangerous weapon, eluding an officer, operating after suspension, and failure to provide a correct name to a law enforcement officer. The charges are pending.

Conclusion

Attorney General Janet T. Mills concludes that at the time the shot was fired at Ms. Penraese's vehicle by Officer Smolinsky, it was reasonable for the officer to believe that deadly force was imminently threatened against him, as well as others whom Ms. Penraese was apt to encounter, and it was reasonable for him to believe that it was necessary to use deadly force – shooting at the vehicle in attempt to disable it – to protect himself from the imminent threat of deadly force posed against him by Ms. Penraese's actions. The Attorney General's conclusions are based on numerous interviews, a forensic investigation, and a review of all the evidence available from all sources. All facts lead to the conclusion that Officer Smolinsky acted to defend himself and others potentially in the path of Ms. Penraese's vehicle.

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