

MAINE STATE LEGISLATURE

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May 29, 2022

The Hon. Anne M. Carney, Senate Chair
The Hon. Thom Harnett, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Dear Sen. Carney, Rep. Harnett, and Members of the Committee on Judiciary:

The Deadly Force Review Panel completed its 13th examination of the use of deadly force by a law enforcement officer. Pursuant to Title 5, section 200(K)(7), “within 30 days of the conclusion of the examination of the use of deadly force by a law enforcement officer . . . the panel shall submit a report on the panel's activities, conclusions, and recommendations with regard to the incident to the joint standing committee of the Legislature having jurisdiction over judiciary matters.” The report is enclosed.

The Panel examined the incident that occurred on November 26, 2019, in Thorndike, the details of which are part of the Panel’s enclosed report.

For the Deadly Force Review Panel:

Francine Garland Stark, Chair

Enclosure

November 26, 2019, Thorndike Use of Deadly Force Incident

As required by 5 M.R.S. § 200-K, the Maine Deadly Force Review Panel submits the following report of the November 26, 2019, use of deadly force incident involving Trooper Thomas Bureau II of the Maine State Police. By statute, after the release of the report of the Attorney General, the Panel shall examine deaths or serious injuries resulting from the use of deadly force by a law enforcement officer. The purpose of the examination is to find independently whether there was compliance with accepted and best practices under the circumstances or whether the practices require adjustment or improvement. The Panel is charged with recommending methods of improving standards, including changes to statutes, rules, training, and policies and procedures designed to ensure best practices that prove increased public and officer safety. The Panel is not charged with undertaking a *de novo* review of the determination of the Attorney General regarding the legality of the use of deadly force by law enforcement; discussions and recommendations of the panel are independent of the Attorney General.

Factual Synopsis

Eric Fitzpatrick lived in Thorndike with his ex-wife. On November 26, 2019, Mr. Fitzpatrick spent most of the day consuming alcohol. In the evening, while the ex-wife was at work, Mr. Fitzpatrick's neighbor witnessed him yelling and screaming while outside and reported this behavior to the police. Mr. Fitzpatrick called 911 several times and demanded that a police officer be sent to his residence. During these calls, he said that he was intoxicated, and had a handgun, TASER, chemical mace, and body armor. This information was relayed to State Police Trooper Thomas Bureau and another trooper. Once home from work, the ex-wife called 911 to report that Mr. Fitzpatrick had "attacked" her and threatened to tase her. When the troopers arrived at the residence, Mr. Fitzpatrick confronted them, who pointed what Trooper Bureau perceived to be a handgun and a TASER, first at the other trooper and then at him, and refused to follow demands to drop the weapons. Trooper Bureau shot Mr. Fitzpatrick who sustained a gunshot wound but survived the injury.

Information the Panel Reviewed

Prior to its review, the Panel received a complete copy of the investigative materials compiled by the Attorney General's Office. They consisted of all the original investigative materials, including interview recordings and reports, forensic reports, photographs, emergency communications transcripts, criminal history, medical reports, police vehicle dashboard camera recordings, and other materials. The Panel also reviewed the report of the critical incident review conducted by the State Police dated April 7, 2022, as well as the Attorney General's April 6, 2002 report.

Summary of Panel Discussion

On April 28, 2022, the Panel met via Zoom, reviewed the referenced incident, and asked questions of Attorney General Detective Patrick Gagnon, the primary investigator. The Panel discussion focused on (1) the police response to the neighbor's initial 911 call of a disturbance that

was supplemented by 911 calls Mr. Fitzpatrick made, (2) the police response to the ex-wife's subsequent call of being attacked by Mr. Fitzpatrick, (3) whether the circumstances constituted a barricaded suspect situation that prescribed a response different than that engaged by the two troopers, and (4) the continuing theme in these reviews of disparate records management systems in use by law enforcement agencies that oftentimes precludes ready access to important historical data that could assist with law enforcement's response.

Observations

1. Relying on the ex-wife's confident assertion that she would be successful in calming Mr. Fitzpatrick down once she got home, the officers decided against responding to the Fitzpatrick residence based on the neighbor's disturbance call. The officers knew that Mr. Fitzpatrick was flagged in available police files as "schizophrenic," that he had called 911 and claimed to be intoxicated and in possession of firearms, and that he demanded that an officer respond to his residence. Not until the ex-wife returned to the residence and called 911 to report that Mr. Fitzpatrick had "attacked her" and tried to tase her did the officers go to the residence.
2. When the troopers arrived at the Fitzpatrick residence, they knew the ex-wife had taken refuge in her car in the dooryard and that Mr. Fitzpatrick was alone inside the house, potentially armed. They took no action to safely remove her from potential danger or staff a perimeter and use that time to attempt to get mental health and criminal history information on this individual before they started calling for Mr. Fitzpatrick to come out of the house. (When Trooper Bureau eventually shot Mr. Fitzpatrick in response to an imminent threat of unlawful deadly force, the ex-wife had emerged from the car and was standing next to it not far from the front door of the house from which Mr. Fitzpatrick emerged and threatened the officers.)
3. This incident included several elements common to circumstances in which a person in mental health crisis acts to carry out "suicide by cop." Mr. Fitzpatrick was screaming at a 911 operator that an officer must be sent to his residence, but the person who responded was his ex-wife, not the police he demanded. He was geared up for a confrontation with the police. While he did not have live ammunition or a gun, he used weapons similar in appearance to firearms as offensive weapons and insisted to the police that he was pointing a handgun with live ammunition at them.
4. The responding officers did not have ready access to all the information concerning past law enforcement interactions with Mr. Fitzpatrick. While Mr. Fitzpatrick had a long history of confrontations with the Augusta Police Department, that information was not readily available to the troopers because of the inability to readily query disparate records management systems.
5. Mr. Fitzpatrick suffered from a serious prior head injury that resulted in persistent mental illness episodes and when he consumed alcohol, he became violent and confrontational. This was a pattern of behavior in which his mother, his ex-wife, and the police all had been intervening over many years to protect Mr. Fitzpatrick from harming himself and those around him. More information from his mother and a mental health provider with some knowledge

of what had historically been effective in earlier interventions may have been of use to the responding officers.

6. The State Police report of its critical incident review included no discussion, observations, or recommendations about the decision to allow the ex-wife to return on her own to the residence, the advisability of immediately instructing Mr. Fitzpatrick to come out of the house, and the failure to remove the ex-wife from the scene as would have been indicated by the agency's domestic violence policy.

Recommendations

1. While the Panel is cognizant of the significant potential cost and the practical aspects of creating a common records management system for law enforcement agencies in the state, the Panel recommends that the Department of Public Safety and a consortium of law enforcement commit to developing such a system to assure greater information sharing among all law enforcement agencies that, among other benefits, would provide for prompt access to relevant historical data when officers are responding to potentially dangerous situations.
2. The Panel recommends that the State Police supplement its critical incident review to include consideration of the observations raised in this report.

Timeline and Detail

On the evening of November 26, 2019, Trooper Thomas Bureau II and another trooper learned of a 911 call from a woman in Thorndike expressing concern that her neighbor, Eric Fitzpatrick, known by the police to have a history of mental health issues, was yelling outside her house. A trooper drove to the address and detected no noise. Trooper Bureau spoke to the neighbor by telephone and learned that Mr. Fitzpatrick's ex-wife, with whom Mr. Fitzpatrick was living, worked at a restaurant in Unity. He spoke with her by telephone at about 9:15 p.m. She told Trooper Bureau that she would be home shortly and would be able to calm Mr. Fitzpatrick down. At approximately 10:00 p.m., Trooper Bureau learned that Mr. Fitzpatrick called the Waldo County Sheriff's Office and reported that he had guns and TASERS at his residence. Trooper Bureau went to the Unity restaurant to speak with Mr. Fitzpatrick's ex-wife before she left work. She confirmed that Mr. Fitzpatrick had a TASER but no firearms. Again, she said that she would be home shortly, and calm Mr. Fitzpatrick down. She assured Trooper Bureau that she felt safe going home and that this happens all the time.

At about 10:30 p.m., Trooper Bureau met with the other trooper in Unity. They learned that Mr. Fitzpatrick called the Sheriff's Office again and said that he was intoxicated and requested that officers respond to his home. He disconnected the call without explaining why he was requesting the police. Ten minutes later, the troopers learned that the ex-wife called 911, reported that she was home, and that Mr. Fitzpatrick "is freaking out on her and he is trying to tase her at this time." Trooper Bureau and the other trooper headed to the residence, learning on the way that the ex-wife was in a vehicle in the driveway and Mr. Fitzpatrick was trying to break the window of the vehicle. The troopers, both in uniform, arrived with lights and sirens activated. They could see light and hear yelling from within the house. The ex-wife informed the troopers that Mr.

Fitzpatrick was inside the house but warned there was a back door from which he could leave. When asked to confirm that there were no guns in the house, she told them that Mr. Fitzpatrick had “just a prong TASER that shoots a prong and a flashlight TASER.” She said that Mr. Fitzpatrick tried to tase her and she punched him to protect herself.

The troopers positioned themselves at opposite corners of the house and started calling to Mr. Fitzpatrick to come outside. Trooper Bureau had his TASER at the ready and repeatedly identified himself as State Police and for Mr. Fitzpatrick to come outside. Mr. Fitzpatrick turned the lights off in the house. The troopers could see a flashing light within the house indicative of a TASER. Trooper Bureau holstered his TASER, retrieved his service weapon, and aimed through a window. The other trooper was on the front lawn shining a flashlight in the direction of the house and after he confirmed his belief that Mr. Fitzpatrick was yielding a TASER, Trooper Bureau holstered his handgun and again drew his TASER. Trooper Bureau looked through a window and could see Mr. Fitzpatrick aiming an object in his right hand out the window. Mr. Fitzpatrick then said he was coming outside. He opened the front door and stood at the threshold, with both arms pointing in the direction of the other trooper. Trooper Bureau saw what he perceived to be a TASER in Mr. Fitzpatrick’s right hand but what he believed to be a pistol in his left. The trooper scrambled back toward the trees to seek cover. Mr. Fitzpatrick continued to aim the TASER and pistol at the trooper who yelled, “Eric, put it down.” Mr. Fitzpatrick responded, “Go ahead, I’ve got a live [indiscernible] just like you do! Put it down motherf--ker or I will get you too. Go ahead, you f--ker. Go ahead. I’ll put you down like a mother f--king sack of sh-t! Go ahead!” The ex-wife appeared outside her vehicle and called out a few times, “It’s a BB gun.” Mr. Fitzpatrick loudly asserted, “It’s not a BB gun! I’ve got f--king live ammo here! Go ahead. I dare you to. Go ahead. I’ve got mace. I’ve got everything! Let’s see what you got, you mother f--king dick!”

Trooper Bureau drew his service weapon, came around the corner and yelled something to draw Mr. Fitzpatrick’s attention away from the other trooper. This caused Mr. Fitzpatrick to turn his attention to Trooper Bureau. As Trooper Bureau advanced toward Mr. Fitzpatrick, Mr. Fitzpatrick aimed the TASER and the pistol at Trooper Bureau. Trooper Bureau fired two rounds at Mr. Fitzpatrick who, struck by the gunfire, stumbled into the kitchen, and fell to the floor. The troopers handcuffed him and administered first aid. When they removed his jacket, they found that he was wearing a ballistic vest without an actual ballistic shield or panel, a gun belt with a Glock pellet pistol in a holster, and handcuffs. “Bail Enforcement Agent” in gold lettering was on the back of the vest. On the kitchen floor next to Mr. Fitzpatrick was a TASER and what appeared to be a handgun with a black grip and orange barrel, which was later determined to be a pepper spray gun. Mr. Fitzpatrick sustained a gunshot wound, but he survived his injury.

Panel Members

Michael Alpert, President, Greater Bangor Area Branch NAACP
Debra Baeder, Ph.D. Clinical Director of Office of Behavioral Health, DHHS
David Bate, Esq.
Stephen Burlock, Esq., Assistant District Attorney (Retired)
John Chapman, Esq.
Jack Clements, Chief of Police, Saco
Rick Desjardins, Director, Maine Criminal Justice Academy
Sandra Slemmer, designee of Mark Flomenbaum, M.D., Ph.D., Chief Medical Examiner
Fernand Larochelle, Secretary
Brian MacMaster, Chief, Attorney General Investigations
Joel Merry, Sheriff, Sagadahoc County
Michael Sauschuck, Commissioner, Department of Public Safety
Francine Garland Stark, Executive Director, Maine Coalition to End Domestic Violence, Chair
Dan Tourtelotte, Maine State Law Enforcement Association
Vendean Vafiades, Esq., Vice Chair

Note: The individuals who serve on the Panel are appointed to bring their professional expertise to bear on discussions of these complex cases. Thus, a member of the Panel may know or have had contact with individuals who were involved in the case under review. In such situations, the member reports such affiliations to the Panel, and that information is recorded in the meeting minutes. If the Panel member determines he or she has a conflict of interest, the Panel member is recused from voting on the Panel's observations and recommendations regarding that case.