

MAINE STATE LEGISLATURE

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August 1, 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 15th 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 April 14, 2020, in Old Town, the details of which are part of the Panel’s enclosed report.

For the Deadly Force Review Panel:

Francine Garland Stark, Chair

Enclosure

April 14, 2020 – Old Town 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 April 14, 2020, use of deadly force incident involving Detective Scott Duff and Trooper Garret Booth of the State Police Tactical Team. 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

Thomas Powell, 31, resided with his mother in Old Town. On April 13, 2020, the State Police informed the Old Town Police Department that Mr. Powell was a suspect in a residential burglary in Surry on April 13th in which a Honda Pilot was stolen. A few minutes after midnight on April 14th, an Old Town police officer drove by Mr. Powell's residence and observed the stolen vehicle in the driveway. Almost immediately, neighbors reported hearing three gunshots coming from the area of Mr. Powell's residence. Attempts by officers to reach Mr. Powell via loudspeaker and cellphone to engage in negotiation were unsuccessful. The State Police Tactical Team and Crisis Negotiation Team responded. All attempts over the next eight hours to persuade Mr. Powell to come out of the residence and surrender were unsuccessful. Mr. Powell fired three shots at two Tactical Team members from inside the residence. Shortly after that, Mr. Powell walked onto the porch of the residence armed with a rifle and appeared to be actively scanning for an officer who had ordered his surrender. When Mr. Powell ignored commands to drop the rifle, Detective Duff and Trooper Booth shot him. Mr. Powell died at the scene.

Information the Panel Reviewed

Before its review, the Panel received a complete copy of the investigative materials compiled by the Attorney General's Office. The materials consisted of all the original investigative data, including interview recordings and reports, forensic reports, photographs, emergency communications transcripts, criminal history, medical reports, and other materials. This material included interviews with neighbors, family members, and mental health providers. The Panel also reviewed the report of the critical incident review conducted by the State Police dated April 26, 2022, as well as the Attorney General's report of April 21, 2022.

Summary of Panel Discussion

On June 23, 2022, the Panel met via Zoom and reviewed the referenced incident. Attorney General Detective Patrick Gagnon, who was the primary investigator of this incident, answered

questions from the Panel and responded to observations made by Panel members. Panel members also exchanged comments regarding the incident and the challenges of protective custody when an individual is unwilling or unable to respond voluntarily to mental health intervention. The Panel also discussed co-responding mental health professionals and agreed that in this situation the only appropriate response to Mr. Powell's mental health crisis, which presented a clear and present danger to others, was a law enforcement response. The Panel also discussed concerns for public safety in such a densely packed neighborhood and if law enforcement had taken all reasonable steps necessary to ensure the safety of the public.

Observations

1. As in so many of the cases reviewed by the Panel, the person against whom deadly force was used in this case had a substantial history of mental illness, substance use, and violent behavior. His criminal history included assaults against law enforcement and others.
2. Following a string of burglaries that included the theft of the rifle with which he shot at law enforcement officers the night of the incident, Mr. Powell shut himself in the apartment that he had shared with his mother, who left the residence for her safety, as did the upstairs neighbor. Mr. Powell shot at an Old Town police officer who passed by the residence looking for the vehicle Mr. Powell had allegedly stolen; shot at the officers later positioned behind the residence; and appeared on the porch with the rifle in hand, scanning for the officer who had tried to engage him in dialogue.
3. Simultaneous with Mr. Powell's escalating behavior, the State Police Crisis Negotiation Team reached out to both Mr. Powell's mother and a counselor, who was the last known mental health professional to have had contact with Mr. Powell, to gather information that might inform negotiations. Such information gathering has been recommended by this Panel in several earlier cases, and the Panel commends the Crisis Negotiation Team for following the protocol necessitated by this situation.
4. At one point during the more than eight hours of the standoff, Mr. Powell emerged onto the porch unarmed. Law enforcement tried to engage him in dialogue. But when he appeared with a weapon in hand, the decision was made to shoot.
5. Fourteen months before this incident, Mr. Powell's mother reached out to law enforcement and mental health professionals seeking the involuntary commitment of her son. Assessed by mental health professionals and found not to have met the threshold for involuntary commitment, Mr. Powell agreed to voluntary treatment. However, he left the facility against medical advice after one night. The Panel discussed at length the complexity and challenge of determining when a person should be taken into protective custody. The Panel also observed that the opportunities to avert crises such as this incident lie in the occasions when non-law enforcement interventions are appropriately engaged, even if involuntary, the person in crisis is open to or at least present for the possibility of effective treatment, and that treatment is maintained over time.

6. Mr. Powell's mother was in an untenable situation, concerned for her son due to his mental illness and substance use disorder, living in fear for her safety and his, and unable to secure effective intervention for his behaviors. The Panel observed that this, too, is a tragic and recurring theme in the cases it has reviewed to date.

Recommendations

None

Timeline and Detail

On Monday, April 13, 2020, State Police detectives investigating a report of a residential burglary in Surry, Maine, discovered that the front door of the residence was forced open, and jewelry stolen from the residence. Also reported stolen was a white Honda Pilot. A Subaru Impreza with no registration plates was left in its place. The detectives noticed that the tread pattern on the Subaru tires was consistent with tire impressions left at the scene of other residential burglaries in the area, and property in the rear of the Subaru resembled property reported stolen in other area burglaries. Detectives determined that the vehicle owner was the mother of Thomas Powell of Old Town. They learned from the mother that Mr. Powell had been using her Subaru and that Mr. Powell was suffering from mental illness. She attempted to have him involuntarily committed for treatment four months previously, but he signed himself out of the hospital against medical advice. She last saw Mr. Powell during the evening of April 12, 2022, at her residence in Old Town. She said he was talking to himself, and she stayed in her room and left the residence early the next morning. She did not believe that he had access to weapons but said that he had mentioned in the past that the only way the police would take him into custody would be to kill him.

State Police notified the Old Town Police Department that Mr. Powell was a suspect in a burglary in which a white Honda Pilot was stolen. Shortly after midnight on April 14th, an Old Town police officer drove by the Powell residence and observed the Honda Pilot in the driveway. The officer reported his observation to the dispatcher, who notified the State Police. Almost immediately after the officer reported the observation to the dispatcher, neighbors reported hearing three gunshots coming from the area of Mr. Powell's residence. Later investigation disclosed bullet defects in the residence across the street from the Powell residence, the trajectories of which were consistent with someone at the Powell residence shooting at the passing Old Town police cruiser.

Notified of the stolen vehicle in the Powell residence driveway, a State Police supervisor assigned troopers to establish a perimeter around the residence. A trooper called a cell phone number known to have been used by Mr. Powell in the past, but it was not the correct number. The State Police supervisor used his cruiser's public address system (PA) and sirens to try to get Mr. Powell to come out of the residence. Unsuccessful, he moved closer to the residence and again attempted to make contact, requesting Mr. Powell to call 911 to speak with him. The windows to the residence were covered with blankets and other items. The officers on the perimeter saw no movement inside the residence. For the next 30-45 minutes, the supervisor continued to attempt to contact Mr. Powell. In the meantime, a judge issued an arrest warrant for Mr. Powell, as well

as a warrant for a search of his residence. The State Police Tactical Team responded, along with the State Police Crisis Negotiation Team.

Early in the morning of April 14th, a State Police crisis negotiator telephoned Mr. Powell's mother, who said that Mr. Powell had been keeping to himself for the past six months and had stopped seeing his counselor. He suffered from post-traumatic stress due to an incident 15 years ago in which he was severely beaten with an iron pipe. He did not like authority figures. There was an incident in Bangor in January 2019 when Mr. Powell engaged the emergency brake of his mother's car while she was driving, and he was supposed to have been involuntarily committed but the order lacked judicial endorsement, and Mr. Powell was released. She believed that he smoked a little 'weed' and used Suboxone. She provided a description of the house and its layout so that the negotiator could draw a floor plan of her apartment and send it to the commanders of the crisis negotiation team and the tactical team.

With contact information provided by Mr. Powell's mother, the crisis negotiator was able to reach Mr. Powell's most recent counselor, who said that he had last spoken with Mr. Powell two or three months ago and that he was in the process of discharging Mr. Powell from the program due to his lack of participation. He described Mr. Powell as paranoid and depressed, but he had not worked with him long enough to offer a diagnosis. During their last contact, Mr. Powell had mistakenly thought the counselor was a police officer and immediately shut down. The counselor said that Mr. did not like 'cops' at all.

The information from Mr. Powell's mother and counselor was received simultaneously with the armed confrontation.

While the crisis negotiator was gathering information, Detective Scott Duff, a member of the State Police Tactical Team, was assigned to a perimeter position inside a residence across the street from and facing the front of the Powell residence. Detective Duff saw Mr. Powell come out of the house onto the porch and look up and down the street but did not see any weapons. Later, Detective Duff heard three gunshots and a Tactical Team member announce over the radio, "He's shooting at our position." Detective Duff saw the door of the residence open, and Mr. Powell step out onto the porch holding a rifle. Detective Duff shouted, "State Police! Drop the gun!" Mr. Powell verbally responded but did not drop the rifle. Detective Duff believed that Mr. Powell was actively looking for law enforcement officers. Detective Duff saw Mr. Powell lean to his right and look up the street to the Command Post. Mr. Powell walked to the threshold of the door. Detective Duff fired three shots at Mr. Powell. Mr. Powell fell at the threshold of the door.

Meanwhile, Trooper Garret Booth, another member of the State Police Tactical Team, was assigned to a perimeter position across the street from the Powell residence. While moving through residential backyards on his way to the position, he heard several gunshots fired in quick succession. He heard another trooper on the perimeter report over the radio that "they" were being shot at from the Powell residence. Trooper Booth moved to a position where he had a clear view of the front porch and was in that position for five to ten minutes when Mr. Powell came outside carrying a rifle. Mr. Powell was walking on the porch toward the left side of the residence and Trooper Booth believed that Mr. Powell could compromise the perimeter on the side where other team members were positioned. Trooper Booth, who was 30-35 yards away from Mr. Powell,

heard a Tactical Team member aggressively and loudly issuing verbal commands to drop the gun. Mr. Powell did not put his rifle down nor put his hands up. Instead, Mr. Powell went to the porch door and opened it. Trooper Booth fired one round at Mr. Powell, who was still outside the threshold of the door. Trooper Booth also heard other rounds fired. Mr. Powell fell to his knees, then to his side. Mr. Powell, struck by gunfire, died at the scene.

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.