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November 12, 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 17th 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 January 9, 2022, in the Town of Waldo, the details of which are part of the Panel’s enclosed report.

For the Deadly Force Review Panel:

Francine Garland Stark, Chair

Enclosure

January 9, 2022 - Waldo 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 January 9, 2022, use of deadly force incident involving Trooper Tyler Harrington of the 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

On Sunday afternoon, January 9, 2022, a woman called 9-1-1 and reported that she had fled to a neighbor's home with her five-year-old daughter after her husband, Kote Aldus, "choked" her and refused to let her take their two-week-old baby. She said he had been drinking and, while he had not threatened her with a firearm, there were several in the house. She expressed grave concern about the welfare of the two-week-old baby, who was still in the house with her husband. State Police Trooper Tyler Harrington was one of many officers who responded to the 9-1-1 call. About two hours after the 9-1-1 call and about 17 minutes after his arrival outside the Aldus residence, Trooper Harrington, believing that Mr. Aldus was going to shoot at other troopers, fired at Mr. Aldus who, struck by the gunfire, fell back into the house where he remained non-compliant until he was taken into custody with the aid of a police dog and transported to a hospital. The two-week-old baby was located safe and uninjured in the house. Mr. Aldus recovered from his wounds.

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, cruiser camera video footage, emergency communications, criminal history, medical reports, and other materials. The Panel also reviewed the July 23, 2022, report of a critical incident review convened by the State Police on January 13, 2022, as well as the Attorney General's report of July 7, 2022.

Summary of Panel Discussion

On September 22, 2022, the Panel met via Zoom, reviewed the referenced incident, and asked questions of Attorney General Detective Seth Blodgett, who investigated Trooper Harrington's use of deadly force. The Panel noted variations in the perspectives of Trooper Harrington and another trooper who accompanied Trooper Harrington as part of establishing a perimeter around the Aldus residence, as well as a lack of objectively verifiable information as to

whether Mr. Aldus had a firearm when he was shot. The Panel noted Mr. Aldus' military service, alleged injuries that he received while a combatant, his periodic access to veterans' services, and his current nonparticipation in counseling. The Panel also discussed the combination of mental health episodes and substance use disorder in what has become a common theme in deadly force cases reviewed by the Panel.

Observations

1. The accounts of Trooper Harrington and a fellow trooper who were together in a position outside the Aldus residence varied concerning their observations of Mr. Aldus' activity and the conclusions or inferences drawn from those observations. There was no information in the investigative file indicating any attempt to resolve the differences, although an explanation was provided during the Panel discussion that suggested that Trooper Harrington was in a more favorable position to observe the activity of Mr. Aldus because of an enhanced rifle scope, as well as Trooper Harrington, a member of the State Police Tactical Team, having greater experience and training than his fellow trooper, a relatively new officer.
2. Before shooting Mr. Aldus, Trooper Harrington stated he observed a bulge in Mr. Aldus's right pocket and a motion made by Mr. Aldus that he interpreted as Mr. Aldus reaching for a gun. The evidence from the scene included several firearms, at least two of which were near where Mr. Aldus lay wounded. There was no information in the investigative file to confirm if there was a gun in Mr. Aldus' pocket, or that a gun had fallen out of his pocket, or if a gun or another object was found and moved. The Panel observed that the apparent presence of a gun on Mr. Aldus' person was a significant factor in Trooper Harrington's assessment of the need to use deadly force.
3. The Panel noted that there was a two-week-old child in the residence, information available to the responding officers. The Panel observed that Trooper Harrington shot several rounds aimed at Mr. Aldus in a doorway of the home. While Mr. Aldus was not holding the child, the officers did not know where the child was located in the residence at the time Trooper Harrington fired. The Panel noted that these facts were not mentioned or apparently considered by the Internal Review Team.
4. The Panel was concerned with Mr. Aldus' access to and ownership of several firearms. Although revealing numerous prior offenses, the investigation into his criminal history did not result in the legal conclusion that Mr. Aldus was a prohibited person regarding firearm ownership or possession. Firearms had been removed from the residence in the past but had been released to Mr. Aldus's wife. None of the active protection orders against Mr. Aldus included a prohibition against possessing firearms.
5. The Panel expressed concern about the lack of immediate medical care for Mr. Aldus' wife. She had been strangled, punched in the face, thrown up against a wall, and beaten. While the information in the file indicates she was escorted to the Belfast Police Department to be interviewed and declined emergency medical services at the time, there is no information that she was provided with later medical attention and care for her physical and emotional trauma.

6. The Panel observed that Mr. Aldus had a significant criminal, substance use disorder, and mental health history. He had a juvenile record. He served in the military where, according to him, he sustained a traumatic brain injury and suffers from PTSD. According to Mr. Aldus, he was discharged from the military due to a request he made based on a family hardship. Further review of his military record revealed that he had been discharged due to alcohol use and an improper weapon discharge. The night of the incident at his home, he was inebriated to the point that he could not accurately recall what happened. He said that he received counseling at one time from the Veterans Administration but had not participated for some time. Since the incident, he has been charged with several crimes related to the night he was shot and his alleged actions since then, including tampering with a witness and violating a protective order and conditions of release. He is currently in custody. The Panel is concerned that Mr. Aldus' behavior and problems will continue unchecked when he is eventually released into the community without necessary services and supervision. The Panel strongly suggests that Mr. Aldus needs continued support from veterans' services and strong criminal justice oversight such as is provided in programs like the Maine Judicial System's Veterans Court Program.

Recommendations

1. The State Police incident review report contains recommendations regarding the use of equipment. The Panel agrees and recommends that when video and/or audio equipment is available, it should be activated and used throughout an incident. In this case, such recordings may have assisted in resolving the discrepancies in the recollection of troopers at the scene, as well as establishing whether Mr. Aldus was armed when he was shot.
2. The Panel recommends that the State Police consider the fact that when Mr. Aldus was shot in the doorway of the home, the trooper did not know the location of the two-week-old child in the residence. The Panel requests that the State Police inform the Panel of any additional findings.

Timeline and Detail

At approximately 4:30 p.m., on Sunday, January 9, 2022, a woman in Waldo called 9-1-1 and reported that her husband had attacked and choked her and taken their two-week-old baby. She expressed fear that the baby was not safe. The caller identified her husband as Kote Aldus and said that she had left their home and was calling from a neighbor's home on East Waldo Road in Waldo. She further added that Mr. Aldus had been drinking and had weapons in the house although he had not threatened her with a weapon.

About 25 minutes later, two State Police troopers spoke with the wife at the neighbor's home. She related that she, Mr. Aldus, their two-week-old baby, and her five-year-old child from a prior relationship were traveling home when Mr. Aldus started calling her names, asserted that the two-week-old baby was not his biological child, and told her to collect her belongings and leave. Back at their residence in Waldo, the wife said that Mr. Aldus grabbed her, punched her in the face, choked her, and then took the baby into the house. The wife fled in her car with her five-

year-old child to her neighbor's home. The troopers observed bruising around her neck consistent with being strangled. The woman further reported that Mr. Aldus had multiple firearms in the residence.

Trooper Tyler Harrington also responded to the neighbor's home and was briefed by one of the troopers already there. Trooper Harrington had one prior contact with Mr. Aldus and was aware that other officers had dealt with him on several occasions. In particular, Trooper Harrington was aware that Mr. Aldus was assaultive and combative toward law enforcement officers in the past. Shortly after 5 p.m., the three troopers still at the neighbor's home heard two gunshots from the direction of the Aldus residence. The wife again expressed her fear that Mr. Aldus would hurt the baby. The wife, five-year-old child, and neighbor were evacuated to a safer location, and officers were assigned to positions around the perimeter of the Aldus residence. Trooper Harrington and a fellow trooper were initially assigned to an area on the south side of the house. At approximately 5:10 p.m., the State Police Tactical Team and Crisis Negotiation Team were activated. At 5:53 p.m., officers heard at least one gunshot from within the Aldus residence. After hearing the gunshot, Trooper Harrington and his fellow trooper moved to a position at the wood line with a view of a sliding glass door on the south side of the house. At 6:16 p.m., Trooper Harrington reported that Mr. Aldus came out via the glass doorway and said, "Come on!" Trooper Harrington observed Mr. Aldus pacing back and forth and saying, "Come get me [expletive]." Mr. Aldus appeared to scan the wood line with binoculars. Trooper Harrington heard him say again, "Come get me [expletive]. Come get me." His speech was slurred, consistent with reports that he was intoxicated. Trooper Harrington observed Mr. Aldus return to the interior of the house and change his clothes. Mr. Aldus emerged from the house again. Trooper Harrington saw a bulge in Mr. Harrington's right pants pocket and what appeared to resemble the grip of a pistol sticking out of the pocket. Mr. Aldus turned toward the driveway and announced, "I'm going to shoot you [expletive]."

Trooper Harrington was aware that other troopers were making their way up the driveway. He described seeing Mr. Aldus make a quick motion with his right hand, moving it up his right leg, a gesture he interpreted as Mr. Aldus drawing a gun from his right front pocket. Trooper Harrington, who had taken cover behind a pine tree later determined to be 65 yards from the sliding glass door, fired several rounds from his rifle at Mr. Aldus. Mr. Aldus, struck by the gunfire, fell to the floor a few feet inside the doorway. The time was about 6:33 p.m., about two hours after the initial 911 call and about 17 minutes after Troopers Harrington and a fellow trooper took their positions on the perimeter. After Mr. Aldus was shot, officers on the perimeter observed him in the house crawling and trying to get up.

A crisis negotiator in an armored vehicle announced to Mr. Aldus via the public address system that they were the State Police and wanted to help him. Mr. Aldus did not respond. Officers used the armored vehicle to breach the sliding glass door to gain safe access to Mr. Aldus to render medical aid. The negotiator directed Mr. Aldus to crawl to the vehicle. He further directed Mr. Aldus to put his hands up and lie on his back so that they could see whether he was armed. Mr. Aldus responded, "[expletive] you" and "[expletive] you, come in here and get me!" By 8:20 p.m., after a series of unsuccessful attempts to persuade Mr. Aldus to surrender, he was taken into custody with the assistance of a State Police dog. Troopers went into the house where they found the baby in a car seat with no apparent injuries. Mr. Aldus was treated for a gunshot wound to his

right knee and multiple dog bites to his lower back. Medical records described him as “acutely intoxicated.”

Several firearms were later found in the Aldus residence, some of which were easily accessible to Mr. Aldus before and after he was shot. A 12-gauge Mossberg camouflage shotgun was on the floor just inside the sliding glass door. Above the shotgun on the kitchen counter was a Glock 9mm semi-automatic pistol. A Kimber .45 semi-automatic pistol was found on the other side of the kitchen counter. There was a Glock 9mm magazine on the floor of the entrance to the master bedroom. An AR-15 semi-automatic rifle and an M&P semi-automatic pistol were located in a canvas bag on the kitchen floor. There was a second M&P semi-automatic pistol on the kitchen table underneath a baby carrier. Two 9mm cartridges were found outside the sliding door.

Mr. Aldus was charged with aggravated assault, domestic violence assault, and creating a police standoff. Mr. Aldus was also charged on January 21, 2022, and again on March 23, 2022, with the crimes of tampering with a witness, juror, or victim, violation of conditions of release, and violation of a protection order. In all but the charge of creating a police standoff, Mr. Aldus’ wife was named as the victim.

When interviewed by an Attorney General detective investigating Trooper Harrington’s use of deadly force, Mr. Aldus expressed his hope that the trooper who shot him would not be in trouble in that “in my opinion, he made the same choice I would have made” under the circumstances.

Panel Members

Michael Alpert, President, Greater Bangor Area Branch NAACP

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

Anna Love, Chief, Attorney General Investigations

Joel Merry, Sheriff, Sagadahoc County

Michael Sauschuck, Commissioner, Department of Public Safety

Benjamin Strick, Senior Director of Adult Behavioral Health, Spurwink

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 that 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.