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DEADLY FORCE REVIEW PANEL
6 STATE HOUSE STATION · AUGUSTA, MAINE 04333

May 26, 2023

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

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

The Deadly Force Review Panel completed its 24th examination of a law enforcement officer's use of deadly force. Under 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 about 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 October 9, 2021, in Portland, the details of which are part of the Panel’s enclosed report.

For the Deadly Force Review Panel:

Francine Garland Stark, Chair
Fernand Larochelle, Vice Chair

Enclosure

October 9, 2021 - Portland 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 use of deadly force incident in Portland on October 9, 2021, involving Officer Kevin Rand of the Portland Police Department, which resulted in injury to Edward Hyman, 42, an unhoused resident of Portland. 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 recommends 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.

Synopsis

At 5:34 a.m. on October 9, 2021, as a result of a 9-1-1 call, Portland police officers, including Officer Nevin Rand, responded to the area of the Preble Street Resource Center on Oxford Street where unhoused individuals were camped. The officers encountered a woman who said a man hiding under a blanket burglarized the Resource Center. Officer Rand and another officer found Edward Hyman under the blanket. Mr. Hyman stood and refused Officer Rand's commands to remove his hands from his coat pockets. Mr. Hyman began making movements as if trying to retrieve a weapon from inside his coat. Both officers drew their service weapons while repeatedly ordering Mr. Hyman to show his hands. Ignoring the commands, Mr. Hyman quickly approached the officers while bringing his hands together in an isosceles shooting stance. Officer Rand shot Mr. Hyman, who later affirmed that he feigned being armed and postured to shoot the officers so that the officers would shoot him.

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 reviewed video recordings of the activities of the police and Mr. Hyman before, during, and after the use of deadly force by Officer Rand. The Panel also reviewed the Attorney General's report of September 20, 2022, as well as the December 27, 2022, report of the Incident Review Team convened by the Portland Police Department.

Summary of Panel Discussion

On April 27, 2023, the Panel met via Zoom, reviewed the referenced incident, and discussed aspects of the actions of Mr. Hyman and the responding officers, as well as the interplay of mental health crisis, substance use disorder, and homelessness.

Observations

1. This incident constituted an intersectional crisis of substance use disorder, mental health crisis, and poverty. Mr. Hyman described himself as a person addicted to heroin and suffering from depression. He was living on the street with no home and no resources.
2. The heavy coat Mr. Hyman was wearing would have rendered the use of less-lethal electronic weaponry, such as TASER, ineffective even if such use were deemed feasible or safe in a situation in which an imminent threat of death or serious bodily injury was present.
3. In the 77 seconds that transpired from the time the officers located Mr. Hyman to the use of deadly force, Mr. Hyman refused to obey repeated commands to take his hands out of his coat, instead taking an aggressive stance against the responding officers and creating the clear impression that he had a gun ready to shoot them. Recovering from his injuries, Mr. Hyman affirmed that he feigned being armed and postured to shoot the officers so that the officers would shoot him.
4. Officer Rand's body-worn camera was well-positioned to capture clear video and provided an unambiguous record of the interaction.
5. The Panel noted that the team conducting the internal review did not include a mental health professional, and there was no mention of the body-worn camera that dislodged from the person of one of the responding officers during the incident.

Recommendations

None.

Timeline and Detail

On October 9, 2021, at 5:24 a.m., a 9-1-1 caller indicated something amiss on Oxford Street near the Preble Street Resource Center, but the call abruptly ended with no details. Several officers, including Officer Nevin Rand, responded to the area of Oxford Street. Officer Rand and another officer encountered a woman who reported that a man, now concealed under a blanket on the sidewalk, burglarized the Oxford Street side of the Resource Center. This part of Oxford Street, lighted by streetlamps and artificial light from area buildings, is in a condensed urban setting and a place where homeless persons congregate.

Officer Rand and the other officer approached the unknown man under the blanket and Officer Rand announced himself as "Portland Police." Receiving no response, Officer Rand lifted the blanket to discover a man, later identified as Edward Hyman, lying on the sidewalk. Mr. Hyman rose to his feet and placed his hands in the outside pockets of his coat. Both officers ordered Mr. Hyman to show his hands to which Mr. Hyman responded, "No." Mr. Hyman then reached into his coat in a manner perceived as trying to access a weapon. His attention focused

on the other officer, Mr. Hyman, with an object now in hand, rapidly brought his arms forward at chest level, hands together, and advanced swiftly toward the other officer. Officer Rand, believing Mr. Hyman to have a handgun and about to shoot the other officer, fired at Mr. Hyman. Struck by gunfire, Mr. Hyman fell to the street. He physically resisted attempts to take him into custody. He was treated at the scene and taken to a local hospital. He survived his injuries. 77 seconds transpired from the time the officers located Mr. Hyman to the use of deadly force

Mr. Hyman, interviewed the next day in the hospital, said he had been a resident of New York City, and recently came to Portland to take employment as a restaurant chef. He admitted that he was using up a gram of heroin a day and his employer fired him in September 2021 upon discovering the illicit drug use. Mr. Hyman said he was homeless after losing his job and became depressed. Just two days before the deadly force event, he wrecked his car in a single-vehicle crash. Mr. Hyman said he decided to commit suicide and believed a way to do so was to threaten a police officer. He said that when the two Portland police officers confronted him, he reached into his coat as if he was drawing a handgun and advanced on the officers in a shooting stance. Several civilian witnesses provided consistent accounts of their observations, including the belief that Mr. Hyman had a gun and was going to shoot a police officer. The object in Mr. Hyman's hands was a black wallet.

Panel Members

Michael Alpert, President, Greater Bangor Area Branch NAACP
 Stephen Burlock, Esq., Assistant District Attorney (Retired)
 John Chapman, Esq.
 Jack Clements, Chief of Police, Saco
 Sandra Slemmer, designee of Mark Flomenbaum, M.D., Ph.D., Chief Medical Examiner
 Fernand Larochelle, Vice Chair/Secretary
 Anna Love, Chief, Attorney General Investigations
 Joel Merry, Sheriff, Sagadahoc County
 Jack Peck, Assistant Director, Maine Criminal Justice Academy
 Michael Sauschuck, Commissioner, Department of Public Safety
 Benjamin Strick, 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.

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