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DEADLY FORCE REVIEW PANEL

6 STATE HOUSE STATION · AUGUSTA, MAINE 04333

January 24, 2025

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

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

The Deadly Force Review Panel completed its 38th 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 July 23, 2023, incident in Chelsea, the details of which are included in the Panel's enclosed report.

For the Deadly Force Review Panel:

Fernand Larochelle, Chair
Stephen Burlock, Vice Chair

Enclosure

July 23, 2023 – Chelsea 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 Chelsea on July 23, 2023, involving Detective Scott Duff of the State Police, which resulted in a nonfatal injury to Frank Foss, Jr., age 28. However, Mr. Foss died from a self-inflicted gunshot wound to the head. 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 may recommend 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 Attorney General's determination 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

On Sunday, July 23, 2023, law enforcement officers were searching for Frank Foss, Jr., who was wanted on an arrest warrant for possessing a firearm by a prohibited person and violating the conditions of release. Information from cellular phone analysis led officers, including Detective Scott Duff of the State Police Tactical Team, to a wooded area between Hankerson Road, Davenport Road, and the Central Maine Power lines in Chelsea. Mr. Foss's history and information learned during the search for Mr. Foss indicated that he was likely armed with a firearm, that he was actively eluding capture, and that he might force the police to shoot him if they confronted him. After unsuccessfully searching the wooded area for some time, Detective Duff rested at the base of a tree. While resting, he heard someone approaching his location from behind him. When he turned to see who was coming, Detective Duff recognized the person as Mr. Foss. Detective Duff identified himself as a law enforcement officer and ordered Mr. Foss not to move. When Mr. Foss raised a handgun and pointed it directly at him, Detective Duff shot Mr. Foss. Mr. Foss shot himself in the head with the handgun he was carrying and died at the scene.

Information the Panel Reviewed

Before its meeting, the Panel members received the investigative material compiled by the Attorney General. The material consisted of all the original investigative data, including interview recordings and reports, forensic reports, photographs, emergency communications, and other materials. The Panel also reviewed the Attorney General's January 19, 2024 report and the State Police Incident Review Team report of November 22, 2024.

Panel Discussion

On November 21, 2024, and December 19, 2024, the Panel met via Zoom and reviewed the referenced incident.

Observations

1. The 28-year-old suspect involved in this incident had an active arrest warrant issued on July 5, 2023, for the charges of Possession of a Firearm By A Prohibited Person and Violation of Conditions of Release. The bail conditions at issue were associated with a one-year Deferred Disposition, which the suspect had agreed to on May 23, 2023, for a Domestic Violence Assault charge. The victim of this assault was the suspect's girlfriend.
2. On July 13, 2020, the suspect was convicted of multiple offenses, including Domestic Violence and Criminal Threatening, for which he received a sentence of four years, all but nine months suspended, along with four years of probation. The suspect's ex-wife was the victim. The suspect also received a nine-month concurrent sentence for Cruelty To Animals (he shot his ex-wife's cat). At the time of the July 23, 2023 incident, the suspect's ex-wife had an active Protection From Abuse Order in place.
3. The suspect's other criminal history included a Theft conviction and two Operating Under the Influence convictions.
4. The suspect's father reported that the suspect had been prescribed anxiety medication about a year-and-a-half before the incident but that he had stopped taking the medication as he did not like how the medication made him feel. The suspect's girlfriend told police that the suspect had PTSD associated with his time in the military and had been taking medication for depression.
5. At the time of this incident, the suspect fatally shot himself in the head with a Taurus .45 caliber handgun. An ATF Trace completed in August of 2023 revealed that the suspect's girlfriend purchased this gun from a licensed dealer on February 1, 2023.
6. Tactical Team members quickly transitioned from making the scene of the use of deadly force safe to providing medical care to the suspect in challenging terrain.

Recommendations

1. The Panel recommends that the Maine Criminal Justice Academy consider using Panel reports when developing and debriefing scenario-based training.
2. The Panel believes that feedback from the departments whose incidents are reviewed is important, not only for that department but also for agencies statewide, since learning and improvement is a collaborative process. Therefore, the Panel requests that within 90 days of receipt of a Panel report, each involved department respond in writing to the Panel, detailing any questions, concerns, and/or corrective actions taken in response to the observations and recommendations noted in the Panel's report.

3. The Incident Review Team (IRT) conducted a thorough review of this incident and found that the department's existing policies regarding Use of Force, Response to Barricaded Subject and Hostage Incidents, Response to Incidents Involving Individuals Experiencing Acute Mental Health Crises, and the Tactical Team all provided an adequate framework for operation. The IRT offered potential clarifying enhancements to each policy that the panel supports.

- a. MSP GO M-1 - POLICY REGARDING THE USE OF FORCE

The policy should include additional officer wellness options and long-term wellness check-ins well after the 6-- to 9-month evaluations.

- b. MSP GO M-2 - POLICY REGARDING RESPONDING TO BARRICADED - SUBJECT INCIDENTS AND HOSTAGE INCIDENTS

Update the definitions to clarify what "inaccessible" means, which is currently used within the definition of a barricaded suspect.

- c. MSP GO M-3 - POLICY REGARDING RESPONSE TO INCIDENTS INVOLVING INDIVIDUALS EXPERIENCING ACUTE MENTAL HEATH CRISIS

The IRT suggested that the State Police review the policy to ensure that it recognizes that an incident can unfold quickly and precludes officers from considering a full assessment.

- d. THE PANEL SUPPORTS THE FOLLOWING EQUIPMENT RECOMMENDATIONS MADE BY THE INCIDENT REVIEW TEAM

- (1) The panel recommends that the Tactical Team have access to a field litter that allows for patient removal from rugged terrain. The team currently has a foldable litter that is difficult to use in heavily wooded areas.
- (2) Upon reviewing the incident, the IRT felt that, at a minimum, the use of the team's K-9 should be evaluated in the context of tracking versus apprehension to ensure the best fit with the K-9 selection.

Factual Summary

On July 2, 2023, the Lincoln County Sheriff's Department received a call from a woman reporting that an intoxicated and armed Frank Foss, Jr., was at her residence in Dresden, located next to the residence of Mr. Foss and his girlfriend. Law enforcement officers were aware that Mr. Foss was prohibited from possessing firearms and from using or possessing alcohol. Law enforcement officers responded and reported hearing at least 12 gunshots when they arrived in the area. Officers tried to communicate with Mr. Foss but got no response. An officer spoke with Mr. Foss's

girlfriend, who said that she had not seen Mr. Foss with a firearm and that he had left the area. In the company of a young child, the girlfriend was uncooperative with attempts by officers to investigate the earlier call. Officers learned from the caller that she was in another room when she heard the door to her residence open. She saw Mr. Foss, who she described as appearing to be “on something;” he denied he had been drinking when she asked him. She said Mr. Foss swore at her and left her residence. She said she saw a gun tucked into the back of his pants. She said that after Mr. Foss left her residence, she saw his girlfriend drive by and then heard several gunshots. The caller’s husband said that he heard three gunshots when Mr. Foss left the residence and several more a short time later and heard Mr. Foss’s girlfriend yelling at Mr. Foss. After officers were unsuccessful in locating Mr. Foss, they left the area.

The next day, a Lincoln County Sheriff’s detective obtained an arrest warrant for Mr. Foss, charging him with possession of a firearm by a prohibited person and violations of conditions of release. A search warrant for Mr. Foss’s residence in Dresden was also obtained. While executing the search warrant, several spent shell casings were located in the driveway and at a firing range in the backyard. The girlfriend’s mother, who was present during the execution of the warrant, told the detective that she was afraid for her daughter’s life. She said her daughter’s vehicle had several bullet holes in it from Mr. Foss firing at it. The vehicle was not at the residence when the search warrant was executed.

The detective learned that the girlfriend was camping in Milo with a cousin. An officer contacted the Milo Police Department and requested that the cousin’s residence be checked to see if the girlfriend’s vehicle was there. A Milo police officer located the vehicle and confirmed it was the vehicle of Mr. Foss’s girlfriend and that it had what appeared to be bullet holes in it. On July 5th, the Lincoln County Sheriff’s detective examined the girlfriend’s vehicle and discovered what appeared to be six bullet holes in it. Inside the vehicle, officers found three loaded rifles and ammunition, as well as .45 caliber ammunition and a handgun holster. On July 7th, the detective learned from the girlfriend that Mr. Foss was responsible for the bullet holes in her vehicle. She said, however, that neither she nor her daughter were in the vehicle when Mr. Foss shot at it. She also told the detective that she had not seen or heard from Mr. Foss and that Mr. Foss did not have a cell phone. She said that Mr. Foss had always planned to go into the woods and shoot himself, and she believed that he had done so in Milo. She also noted that Mr. Foss would definitely try “suicide by cop.”

On July 17th, the Lincoln County Sheriff’s detective obtained a search warrant for the girlfriend’s cell phone, previously identified as being used by Mr. Foss. Three days later, an analysis of cell phone data and text messages disclosed that Mr. Foss was communicating with his girlfriend. However, he was using a different cell phone number than previously known. The analysis showed that Mr. Foss had been communicating with his girlfriend since July 6th, requesting supplies and providing directions on how to get to where he was. The text messages also asked the girlfriend to bring ammunition and alcohol to him. With another search warrant, officers became aware that the cell phone being used by Mr. Foss was showing a location near his home in Dresden. On the afternoon of July 22nd, officers, including members of the State Police Tactical Team, executed yet another search warrant, this one for Mr. Foss’s home, but did not find Mr. Foss. Cell phone location information on July 23rd indicated the phone being used by Mr. Foss was in a specified area on the

Hankerson Road in Chelsea where the girlfriend's parents resided. State Police Tactical Team members, including Detective Scott Duff, searched again for Mr. Foss.

Acting on information indicating that Mr. Foss was in a wooded area near the parent's residence and communicating with his girlfriend, Tactical Team members entered the area with a tracking dog while Detective Duff remained near the residence at the base of a tree. Hearing someone approaching him from behind, Detective Duff saw Mr. Foss appear about 20 yards away. He recognized Mr. Foss from a photograph he had previously viewed. Mr. Foss seemed to be moving "intentionally and slowly" and scanning the woods while walking in Detective Duff's direction. Believing that Mr. Foss had not seen him, Detective Duff waited until Mr. Foss was 10 to 12 yards away, slowly raised his gun, and told Mr. Foss, "State Police, don't move." Mr. Foss raised both hands, with the right hand holding a handgun pointed at Detective Duff. Believing that Mr. Foss was about to shoot him, Detective Duff fired two shots from a seated position at Mr. Foss. Mr. Foss bent forward at the waist, raised the handgun to his head, and fired a single shot. Despite immediate medical aid, Mr. Foss died at the scene from what the Office of Chief Medical Examiner later determined to be a self-inflicted gunshot to the head. It was also determined that one of the shots fired by Detective Duff struck Mr. Foss in the abdomen but was nonfatal.

Panel Members

Fernand LaRochelle, Chair

Stephen Burlock, Esq., Assistant District Attorney (Retired), Vice Chair/Secretary

Michael Alpert, Greater Bangor Area Branch NAACP

John Chapman, Esq.

Jack Clements, Chief of Police, Saco

Sandra Slemmer, designee of Alice J. Briones, D.O., Chief Medical Examiner

Anna Love, Chief, Attorney General Investigations

Joel Merry, Sheriff, Sagadahoc County

Joshua Daley, designee of Jack Peck, Director, Maine Criminal Justice Academy

Michael Sauschuck, Commissioner, Department of Public Safety

Benjamin Strick, Vice President of Adult Behavioral Health, Spurwink

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 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 excused from voting on the panel's observations and recommendations regarding that case.