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September 1, 2023

Colonel William Ross
Chief of the Maine State Police
42 State House Station
Augusta, ME 04333

Dear Colonel Ross:

This office has completed its investigation and legal review of the incident on March 8, 2021, in Livermore Falls, involving the use of deadly force by Sgt. James Macdonald of the Maine State Police against Donald White, 44, of Jay. Mr. White died from a self-inflicted gunshot wound.

Factual Summary

In the early morning hours of Monday, March 8, 2021, Donald White, 44, of Jay broke into the home of 64-year-old Kenneth Smith in Livermore Falls. Mr. White was the former boyfriend of Mr. Smith's daughter. When Mr. White entered the residence, the occupants inside included Kenneth Smith, who was asleep in his first-floor bedroom and Mr. Smith's adult daughter and adult granddaughter, and his daughter's boyfriend, who were all asleep in the upstairs bedrooms. According to Mr. Smith, at approximately 2:30 a.m., he awoke to find Mr. White in his bedroom with two firearms, zip-tie wrist restraints, and handcuffs. Mr. Smith recognized the intruder as Mr. White, his daughter's ex-boyfriend. Mr. Smith and Mr. White argued and when Mr. White instructed him to put restraints on his own wrists, Mr. Smith resisted and they tussled. Mr. Smith ended up on the floor with Mr. White placing a knee on his throat. Mr. White asked Mr. Smith if he missed his late wife and if he wanted to be with her. Mr. Smith said that he stopped resisting and, once his wrists were restrained, Mr. White asked him what time his daughter got up.

Sometime between 5:00 and 5:30 a.m., the daughter's boyfriend awakened and went downstairs. When he entered the kitchen, he saw a man with a gun standing at the threshold between the porch and the kitchen. He did not know at the time that the man was Donald White.¹ Mr. White instructed him to lie on the ground with his hands behind his back. Mr. White tried to place zip-tie restraints on his arms but had difficulty with them; he became frustrated and threatened to shoot the boyfriend in the leg. In the meantime, Mr. Smith's daughter awakened.

¹ The boyfriend knew Mr. White by name only. He knew that Mr. White was his girlfriend's former boyfriend, but he had not met Mr. White.

She was still in bed when she heard a thud downstairs and, thinking that her boyfriend may have fallen, she went downstairs to investigate. When she entered the living room, she saw her boyfriend laying prone on the floor with his hands restrained behind his back. Her boyfriend told her that there was someone in the house. The daughter called Auburn Regional Communications 9-1-1 at 5:23 a.m. The call ended before she provided her name and address when Mr. White grabbed the phone and threw it. Mr. White told her that when the 9-1-1 operator called back, she was to say the first call was a mistake. Mr. White instructed her to place zip-tie restraints on her wrists; he tried to place one on her left wrist, but she resisted.

The boyfriend was still lying on the floor with his hands bound and told his girlfriend to do whatever Mr. White told her. When Mr. White's attention turned to the boyfriend, the girlfriend fled the house and ran to a neighbor's home. The neighbor called 9-1-1 and, on behalf of the girlfriend, reported that the girlfriend's ex-boyfriend, Donald White, had broken into her father's house, that he was armed with a handgun, and that her father, Kenneth Smith, her boyfriend, and her daughter were still in the house. After the girlfriend escaped from the house, Mr. White told the boyfriend to move to the living room and sit on the couch. The boyfriend later recounted that after a while Mr. Smith entered the living room and joined him on the couch. Mr. Smith's arms were no longer restrained because he told Mr. White that his hands were numb and Mr. White removed the restraints. While the boyfriend and Mr. Smith were sitting on the couch, Mr. White was also in the living room constructing pipe bombs. The boyfriend said that he saw 8-10 pipe bombs, battery sources, and remote detonators, and he saw Mr. White placing the pipe bombs around the house.

Officers from the Livermore Falls Police Department and the Androscoggin County Sheriff's Office were the first to respond and set up a perimeter around the house. Livermore Falls Police Officer Stephen Gould called to Mr. White using a public address system. Officer Gould instructed Mr. White to come out of the residence and show his hands. Mr. White did not respond. After a second attempt to contact Mr. White using the public address system, the officers heard an explosion outside the residence, which was later determined to be a pipe bomb thrown from the house into the driveway. Shortly thereafter, the State Police Tactical Team and Crisis Negotiation Team were activated.

At 9:22 a.m., a search warrant for 48 Knapp Street and an arrest warrant for Mr. White were issued. The charges against Mr. White included kidnapping, aggravated reckless conduct, and burglary. By 10:47 a.m., a State Police crisis negotiator was on the phone with Mr. White, who repeatedly asked to speak with the person in charge. Mr. White told the negotiator that this was not an ordinary call. He said to tell the tactical people not to approach, that he had all entrances covered and if they breached the house, it would end badly. Mr. White added that he knew that tactical would try to take him out, that there were timers on the pipe bombs, and he mentioned remote detonation.

At approximately 10:00 a.m., the boyfriend and Mr. Smith's granddaughter escaped the residence through a second-floor window while Mr. White was on the phone with negotiators. The boyfriend reported that he had been sitting on the couch with Mr. Smith for hours, and Mr. White allowed him to go upstairs and rest when he told Mr. White that he was becoming physically sick. He went upstairs where he joined his girlfriend's daughter and removed an air conditioner from a

window, allowing them to escape to the porch roof from which they jumped to the ground. They reported to officers that Mr. White had placed pipe bombs in the house and that he was armed with a handgun. The boyfriend said that he watched Mr. White drill holes in each of the metal pipes and fill them with a black/grey colored powder. He further described watching Mr. White strip and splice wires that he placed in some of the pipes. The boyfriend said that Mr. White constructed approximately eight metal pipe bombs. He watched Mr. White tape one of the metal pipe bombs to an interior door that led to the basement, and he saw Mr. White take several pipe bombs to the porch and return without them. He said that Mr. White had what appeared to be a wireless router with several antennae. Tactical Team operators on the perimeter also reported seeing through their scoped rifles improvised explosive devices (IED) attached to doors and windows and one IED with an antenna.

Over the course of the day and into the evening, negotiators spoke with and texted with Mr. White in an effort to persuade him to come out of the house and to safely release Mr. Smith. Mr. White told the negotiator that he had information concerning a large pedophile ring involving hundreds of people and that he wanted to be treated seriously. He said that he did not want to hurt anyone and that he only wanted to expose the sexual abuse. During this time, Mr. White asked to speak with his doctor and then changed his mind. He told the negotiator that he did not want to hurt anyone and that he would disable the bombs when he could talk to the negotiator's boss. He also spoke of the explosives and a "dead man's switch." The negotiator asked Mr. White the location of the device with the dead man's switch, and Mr. White responded that such devices were scattered throughout the house. Mr. White added that other devices in the house detonated differently, either with timers or fuses. By 8:25 p.m., Mr. White allowed the negotiator to speak with Mr. Smith on the phone. Mr. Smith told the negotiator that Mr. White had a handgun in his waistband and that he had threatened him with the gun. Mr. Smith told the negotiator that were IEDs attached to the doors and windows. He described the IEDs as cast iron pipes with caps on each end. The negotiator was unsuccessful in persuading Mr. White to allow Mr. Smith to leave the residence. Mr. White ended the call, but it was later re-established, and Mr. White told the negotiator that there was a pipe bomb next to Mr. Smith's head. Mr. White thanked the negotiator for not shooting him and Mr. Smith, and he asked the negotiator for a few hours to be left alone. At one point, Mr. White told Mr. Smith that they were all going to die.

Sgt. James Macdonald, a member of the State Police Tactical Team, was assigned to take over a position in the second-floor bathroom of a residence behind the Smith residence. He was in position between 10:45 p.m. and 11:00 p.m. Sgt. Macdonald, armed with a rifle with a night vision scope, saw a man matching Mr. White's description come into view in the window of a rear door. The man was holding a cell phone to his ear with his left hand. Sgt. Macdonald saw the man reach up and adjust a device by the door using his right hand. At 11:02 p.m., Sgt. Macdonald fired one round from his rifle at the man's upper torso. Sgt. Macdonald said that the man screamed and disappeared from the window. Mr. Smith later reported that Mr. White told him that he had been shot in the armpit. He said that Mr. White sat on the couch next to him, started to pray for forgiveness, and put his arm around Mr. Smith while holding a handgun in his other hand.

Negotiators continued to try to call Mr. White but the calls went unanswered. While preparing a plan to rescue Mr. Smith from the house, members of the Tactical Team heard a gunshot coming from Mr. Smith's residence and a bullet striking the exterior wall of the house

across the street. Mr. Smith later told investigators that when he heard the shot from inside the house, Mr. White slumped towards him on the couch. Mr. Smith left the house and told officers that Mr. White was injured on the couch and that there were 15-20 bombs throughout the house. The State Police Bomb Team used a robot to enter the home and confirmed that Mr. White was deceased. The Bomb Team found 11 pipe bombs throughout the house, several of them with remote control receivers and fuses. Bomb making components were located in the kitchen. The pipe bombs and bomb making components were safely removed from the house. A postmortem examination by the Office of Chief Medical Examiner determined that, while Mr. White suffered a gunshot wound through the right arm and into his torso and out his back, he died from a self-inflicted gunshot wound to the head.

Discussion and Legal Analysis

The Office of the Attorney General has exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer who, while acting in the performance of the officer's duties, uses deadly force.² The detectives who conduct these investigations are independent of any other law enforcement agency. The sole purpose of the investigation in this matter was to determine if a criminal prosecution was warranted or if self-defense or the defense of others was reasonably generated by the facts.³ Any such prosecution would require the State to disprove self-defense or the defense of others beyond a reasonable doubt. The investigation did not include an analysis of whether any personnel action might be warranted, whether the use of deadly force could have been averted, or whether there might be civil liability. Indeed, state law provides that the fact that conduct may be justifiable under the Maine law does not abolish or impair any other remedy available under the law. Whether the use of force by a law enforcement officer is reasonable is based on the totality of the particular circumstances and is judged from the perspective of a reasonable officer on the scene, allowing for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a given situation. The legal analysis requires careful attention to the facts and circumstances of each case, including the severity of the crime threatened or committed and whether the suspect poses an immediate threat to the safety of others.

Conclusion

When Sgt. Macdonald shot at Mr. White, he reasonably believed that Mr. White was presenting an imminent threat of death or serious bodily injury to Kenneth Smith and that he had committed crimes involving the threatened use of deadly force, as well as demonstrating that he was likely to seriously endanger human life further unless apprehended without delay. Sgt. Macdonald's belief that Mr. White would kill or seriously injure Mr. Smith or set off the improvised explosive devices and seriously injure Mr. White and others within the vicinity of the house was reasonable under

² 5 M.R.S. § 200-A.

³ Under Maine law, for a law enforcement officer to lawfully use deadly force in self-defense or the defense of others, two requirements must be met. First, the officer must reasonably believe that unlawful deadly force is imminently threatened against the officer or another person and, second, the officer must reasonably believe that the use of deadly force is necessary to defend the officer or other person. 17-A M.R.S. § 107(2)(A).

the circumstances. All the facts and circumstances point to the conclusion that Sgt. Macdonald acted in defense of Mr. Smith and others when he shot at Mr. White.

Sincerely,


Aaron M. Frey
Attorney General