



OFFICE OF THE ATTORNEY GENERAL

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Report of Attorney General on the Use of Deadly Force by State Police Trooper in Ellsworth on June 1, 2014

On June 1, 2014, Jeffrey Barnard, 50, was shot and wounded by State Police Trooper Scott Duff during an armed confrontation outside Mr. Barnard's residence in Ellsworth after a 20-hour standoff during which time Mr. Barnard fired several rounds from a rifle and threw a Molotov cocktail at officers outside his camper.

Facts

In 2012, James Thibodeau of North Street in Ellsworth agreed to allow Jeffrey and Vicki Barnard to park a camper trailer that served as their primary residence next to his home for a short period of time. Two years later, the Barnards were still living in their camper on the Thibodeau property. This living arrangement prompted disputes between the Barnards and Mr. Thibodeau. On Saturday, May 31, 2014, at about 8 a.m., an altercation occurred between Mr. Thibodeau and Mr. Barnard when Mr. Barnard refused to relinquish the keys to Mr. Thibodeau's tractor. This led to the Ellsworth Police Department being called.

An Ellsworth police officer responded to the call and, after a preliminary investigation, instructed Mr. Barnard to relinquish the tractor keys. Mr. Barnard refused and became agitated when the officer told him that he would be charged with theft if he refused to relinquish the keys. Mr. Barnard, who was standing in the doorway of the camper trailer, sent his dog from the camper with a command not to let the officer inside. The dog snarled at the officer. The officer saw that Mr. Barnard's right arm was out of view and ordered him to show his hands. Mr. Barnard responded, "No, [REDACTED] shoot me." He went inside the camper out of view of the officer after refusing several more commands to show his hands. Another officer, one who had interacted with Mr. Barnard in the past, arrived. His attempts to reason with Mr. Barnard were likewise unsuccessful. Mr. Barnard became increasingly more agitated, displayed a can of gasoline, and threatened to blow up the camper. The officers retreated to a safe distance and Mr. Barnard remained inside the camper. Also inside the camper was Mr. Barnard's wife, Vicki Barnard. As additional officers arrived, further assistance was requested

from the State Police Tactical Team for the now barricaded Mr. Barnard. The Tactical Team was unable to respond as it was deployed to a different area of the state; the Bangor Police Department's Special Response Team (SRT) was requested and arrived a short time later.

Meanwhile, State Trooper Scott Duff, a member of the State Police Tactical Team working in another part of the state, became aware of the situation developing in Ellsworth. He learned that Mr. Barnard and his wife had barricaded themselves inside a camper after Mr. Barnard threatened police officers. He received updates on the situation throughout the day, including information that the Bangor Police Department's SRT had responded. Trooper Duff further learned that there may have been a theft involved in the incident, that there was a weapon involved in the standoff, and that Mr. Barnard had outstanding warrants for his arrest. Trooper Duff also learned that three members of the State Police Tactical Team who were not deployed elsewhere were on scene with the Bangor SRT.

Early on, crisis negotiators attempted to persuade the Barnards to come out of the camper. The negotiations would continue over the next 20 hours or so. At points during the standoff, various strategies were used to establish and maintain communication with the Barnards. Throughout the entire encounter, Mr. Barnard continued to make threatening remarks to the police officers on scene and demanded that the news media be brought to the scene so that he could give them various CD's. Mr. and Ms. Barnard made comments to the effect of being ready to meet their maker, that they would use the gasoline to cause an explosion, and that Mr. Barnard had a surprise for the officers. Mr. Barnard made reference to a previous standoff he said he created in California, noting that he would make this one last much longer. Negotiations continued without success. Ms. Barnard left the camper several times to either retrieve something from nearby or to relieve herself outside. Each time, she returned to the camper. The officers concluded from these observations that Ms. Barnard was a willing participant in the standoff.

Two teams of Bangor SRT officers had established positions close to the camper. The SRT officers learned that Mr. Thibodeau had weapons and large amounts of gunpowder in his house and did not want Mr. Barnard to have access to those items. The officers learned from Mr. Barnard that he was in fact aware of the guns and black powder and knew where they were kept inside the house. As the standoff continued, different strategies were used to coax the Barnards from the camper. An initial plan to introduce tear gas into the camper failed. Another tear gas plan was devised, but before it could be implemented, Mr. Barnard fired at least two shots from the camper. Mr. Barnard was heard threatening that he had 100 rounds of ammunition for the officers.

Meanwhile, Trooper Duff, still deployed with the State Police Tactical Team in another part of the state, learned that two shots had been fired by Mr. Barnard. He also learned that the Barnards had gasoline in the camper and had threatened to blow it up. Trooper Duff also learned of the statements made by Mr. Barnard relating to the amount of ammunition he had waiting for the officers.

As the standoff wore on, Trooper Duff and other State Police Tactical Team members were assigned to relieve Bangor SRT officers. They arrived at the scene on North Street in Ellsworth in the early hours of June 1, 2014. Trooper Duff and Sgt. Peter Michaud, also a member of the State Police Tactical Team, were stationed about 80 yards from the rear of the camper. It was now about 2:30 a.m., over 18 hours from the initial call to the Ellsworth Police Department.

Negotiations with Mr. Barnard continued to no avail. At around 3:15 a.m., an armored vehicle with blue lights activated was used to nudge the camper in an attempt to persuade the Barnards to leave the camper. The camper itself was turned slowly by the armored vehicle. The camper's new position provided Trooper Duff a view of the front door of the camper. Six minutes later, shots were fired from within the camper. A few minutes later, after warnings to the Barnards, tear gas was introduced into the camper.

Shortly after, Trooper Duff observed Mr. Barnard in the doorway of the camper holding a rifle pointed down. Mr. Barnard peeked out at the armored vehicle and then disappeared from view as he retreated into the camper. Trooper Duff saw Mr. Barnard peek out in the same direction a second time, this time pointing his rifle higher in the general direction of Trooper Duff and Sgt. Michaud. Trooper Duff heard a negotiator over a loudspeaker ordering Mr. Barnard to drop the rifle. The commands went unheeded. When Trooper Duff observed Mr. Barnard with the rifle raised in his general direction again, he fired one round from his rifle. The round struck Mr. Barnard in the face. The time was about 3:30 a.m.

Mr. Barnard retreated to inside the camper, and continued to ignore commands issued over the loudspeaker for him and his wife to come out. About 20 minutes later, Mr. Barnard threw a Molotov cocktail from the camper. A small fire burned on the driveway between the camper and the house before extinguishing itself. Thereafter, Tactical Team officers manned a hose and sprayed fire-retardant foam into the camper through various openings. When two more shots were fired from within the camper, the officers retreated to the safety of the armored vehicle. Shortly after, Vicki Barnard emerged from the camper and was directed to a safe location. Mr. Barnard then crawled out of the camper. He was given immediate medical attention and taken to a hospital in Ellsworth and then to a Bangor hospital by Lifelight for treatment of the gunshot wound to his face. He was discharged about two weeks later.

Mr. Barnard has an extensive criminal record, which includes convictions for assault on an officer, criminal mischief, criminal threatening, criminal trespass, disorderly conduct, violating conditions of release, and possession of a firearm by a felon. Mr. Barnard is presently charged with federal offenses related to his possession of a firearm during the Ellsworth incident.

Analysis and Conclusion

The Attorney General is charged by law with investigating any incident in which a law enforcement officer uses deadly force while acting in the performance of the officer's duties. 5 M.R.S. §200-A. The only purpose of the Attorney General's

investigation of the incident in Ellsworth was to determine whether self-defense or the defense of others, as defined by law, was reasonably generated by the facts so as to preclude criminal prosecution of Trooper Duff. The review did not include an analysis of potential civil liability, of whether any administrative action is warranted, or of whether the use of deadly force could have been averted.

Under Maine law, for any person, including a law enforcement officer, to be permitted to use deadly force in self-defense or the defense of others, two requirements must be met. First, the person must actually and reasonably believe that deadly force is imminently threatened against the person or against someone else; and, second, the person must actually and reasonably believe that deadly force is necessary to counter that imminent threat.

Whether the use of force by a law enforcement officer is reasonable is based on the totality of the particular circumstances and must be 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 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.

Attorney General Janet T. Mills has concluded that at the time Trooper Duff shot Mr. Barnard, Trooper Duff reasonably believed that unlawful deadly force was imminently threatened against him and other persons within range of the weapon brandished by Mr. Barnard. It was reasonable for Trooper Barnard to believe it necessary to use deadly force to protect himself and others in the area from deadly force. Trooper Barnard acted in defense of himself and others who were within range of and in the line of fire of Mr. Barnard's gun. The Attorney General's conclusion is based on an extensive scene investigation, on interviews with numerous individuals, and on a review of all evidence made available from any source.