

Use of deadly Force by Gardiner Police Officer and State Police Trooper Legally Justified

February 15, 2008

Attorney General Steven Rowe announced today that a Gardiner police officer, James Gioia, and a State Police trooper, Christopher Rogers, were legally justified when they used deadly force against Jason Wentzell, 28, of Vassalboro, during the early afternoon of December 21, 2007, in South Gardiner. Mr. Wentzell died as the result of a gunshot wound to the chest.

The Attorney General's investigation focused on the issue of whether the use of deadly force by the officers in the particular situation was legally justified. The Attorney General is required by law to review all occurrences in which a law enforcement officer uses deadly force while in the performance of the officer's public duty.

Under Maine law, for a law enforcement officer to be justified in using deadly force for purposes of self-protection or the protection of third persons, two requirements must be met. First, the officer must actually and reasonably believe that unlawful deadly force is imminently threatened against the officer or a third person. Second, the officer must actually and reasonably believe that the officer's use of deadly force is necessary to meet or counter that imminent threat of unlawful deadly force.

Attorney General Rowe determined, based on the investigation conducted by his office and the application of controlling Maine law, that Officer Gioia and Trooper Rogers actually and reasonably believed that unlawful deadly force was being imminently threatened against others by Mr. Wentzell, and that the officers also actually and reasonably believed that the use of deadly force on their part was necessary to protect the other persons. Therefore, both requirements of the law having been met, the use of deadly force by Officer Gioia and Trooper Rogers was legally justified.

The Attorney General's investigation revealed the following:

On December 21, 2007, Officer James Gioia of the Gardiner Police Department was working patrol duties in uniform and a marked cruiser. While at the Gardiner Police Station at about noon, Gioia became aware of a broadcast issued by the Kennebec County Sheriff's Office alerting officers in the area that Jason Wentzell, age 28, of Vassalboro, was suicidal and was possibly on his way to a residence in South Gardiner where his estranged wife was staying. The broadcast included a description of the vehicle being driven by Wentzell – a blue 2005 Chevrolet pickup truck. Officer Gioia also became aware through an additional broadcast that Wentzell was armed.

In an attempt to locate Wentzell, Officer Gioia drove south along Route 24 from Gardiner to South Gardiner to the Richmond town line, turned around, and headed back north on the same road. At about 12:13 p.m., as he entered a built-up area known as South Gardiner village, Gioia saw two or three vehicles ahead of him stopped in the northbound lane of the roadway. Initially thinking a vehicle crash had occurred, Gioia activated the blue lights on his cruiser, drove into the oncoming southbound lane of travel, and came to a halt several feet short of the first stopped northbound vehicle. With travel in the northbound lane blocked, Gioia's maneuver also blocked travel in the southbound lane.

Officer Gioia saw a man standing in the roadway carrying a rifle in such a manner that the barrel was pointed skyward. The man, later identified as Jason Wentzell, was pacing near what was later determined to be his blue 2005 Chevrolet pickup truck, which was at a standstill diagonally across the roadway in a fashion that totally precluded travel in the northbound lane and partially in the southbound lane. The driver's door was fully open. The first vehicle stopped in the northbound lane was nearest Wentzell. It was soon determined that inside this vehicle was Wentzell's estranged wife, his infant son, and his mother-in-law. The scene itself was less than a quarter-of-a-mile from the residence where Wentzell's wife had been staying. It was later determined that when Wentzell, driving south on Route 24, saw his wife's vehicle traveling north, he pulled his pickup diagonally across the road and stopped, which precluded his wife's car from proceeding further.

Officer Gioia, having brought his cruiser to a stop and now standing in the "V" of the open door armed with his .45 caliber service weapon, ordered Wentzell to drop his rifle. Wentzell refused. He shouted that "this is between me and my wife." Gioia issued similar commands multiple times, only to get the same response from Wentzell that this was between his wife and him. Gioia got back into his cruiser and drove it several feet closer to Wentzell to a point that the cruiser, still headed north in the southbound lane, and Wentzell's wife vehicle, still at a standstill in the northbound lane, were parallel to one another. Gioia again got out of the cruiser and instructed Wentzell to drop the rifle. Wentzell continued pacing near his pickup truck in a relatively confined area of the roadway. Wentzell told Gioia that "this does not concern you" and at other times in response to commands from Officer Gioia to drop the rifle, Wentzell responded that he was not there to hurt anyone but himself. Officer Gioia during this time had called for backup, radioing the dispatcher that there was a man with a rifle in the middle of the road on Route 24 in South Gardiner. Other officers in the area heard Gioia's call for backup, including State Police Troopers Christopher Rogers and Jonathan Leach, who were each just a few miles away on other calls.

Just prior to Officer Gioia's arrival at the scene, O'Neill LaPlante, an off-duty Richmond police officer who was unarmed and in a privately-owned vehicle, was driving north on Route 24 in South Gardiner when he came upon the vehicles stopped in the roadway. Very soon thereafter, Officer Gioia arrived and engaged Wentzell. When LaPlante later heard radio traffic inquiring about the availability of a police negotiator, he told Officer Gioia that he was a trained negotiator. LaPlante started talking with Wentzell in an attempt to calm him down and persuade him to relinquish the rifle. The attempt was unsuccessful. According to Officer Gioia, however, it did provide an opportunity while Wentzell was focused more on LaPlante for Gioia to instruct Wentzell's wife to get everyone out of her car and to a safer location behind the police cruiser. According to both Gioia and LaPlante, Wentzell became angrier when he discovered that his wife was no longer in her car. Gioia's continued instructions for Wentzell to drop the rifle were met with refusal and obscenities.

At 12:12 p.m., just prior to Officer Gioia's arrival, a man cleaning snow from a nearby parking lot with his father called 911 on his cellular telephone and requested the police. The call was recorded by the 911 answering point. The caller said there was a man in the middle of the road "holding a rifle at some people," and that "this guy's nuts, somebody better get here quick." The caller further reported that the man had "the whole road blocked off" with his truck, and "he's screaming at people [in Wentzell's wife's car] to get out." The caller stayed on the line with the 911 dispatcher for more than eight minutes during which time

Wentzell can be heard on the recording shouting various statements, such as “I’ve had enough. I’m [expletive] not giving anybody any more [expletive] chances. I’m done. I’ve had it. I don’t [expletive] deserve to live anymore. If she won’t get out of the car, it’s over. I’m not here to hurt anybody but myself.” Officer Gioia can be heard trying to persuade Wentzell to relinquish the rifle. Gioia: “I want you to drop the gun.” Wentzell: “I don’t care what you want. Do I look like I care what you want?”

About six minutes had passed since Officer Gioia’s arrival at the scene when Chief James Toman of the Gardiner Police Department arrived, followed shortly by Troopers Christopher Rogers and Jonathan Leach. All three initially took up positions with their respective vehicles about 200 feet north of where Officer Gioia was located. This placed Wentzell, who was about 45 feet away from Officer Gioia, between the three additional officers and Officer Gioia. Trooper Rogers, armed with a rifle, eventually took up a position behind a tree on the west side of the roadway about 100 feet from Wentzell, while Trooper Leach, also armed with a rifle, took up a position behind a high snow bank on the east side of the roadway about 80 feet from Wentzell.

Neither Officer Gioia’s nor Officer LaPlante’s attempts to calm Wentzell or to persuade him to relinquish his rifle had succeeded. According to both Gioia and LaPlante, Wentzell became angrier when he learned that his wife was no longer present. Trooper Leach described Wentzell at that point as becoming more agitated and the tone of his voice sharper. All three officers recalled that it was at that point that Wentzell screamed an obscenity and raised the rifle to his shoulder with it pointed in a southerly direction towards Officers LaPlante and Gioia and the area where his wife, child, and mother-in-law had retreated. Chief Toman, and others, heard Officer Gioia, shout, “No! You don’t want to do that.” At about the same time that Wentzell fired a single shot from his rifle, Officer Gioia and Trooper Rogers simultaneously shot at Wentzell. Trooper Leach also pulled the trigger on his rifle to shoot at Wentzell, but the rifle malfunctioned and did not discharge. Wentzell, struck by the gunfire from Officer Gioia and Trooper Rogers, fell to the ground. Approximately 13 minutes had elapsed from the time Officer Gioia arrived at the scene.

It was later determined that the one shot fired by Officer Gioia struck Wentzell in the upper chest. Trooper Rogers discharged two rounds in rapid succession, one of which struck Wentzell in the right knee, the other of which struck the butt of Wentzell’s rifle, which was later determined to be a .22 caliber semiautomatic. The single round fired by Wentzell struck and penetrated the hood of Wentzell’s wife’s car.

In addition to the 911 caller and his father, 13 other civilian witnesses were interviewed as part of the investigation. Ten of these witnesses were employees of a local business who were, at the time of the event, inside a nearby commercial building. Eight of the ten observed the event unfold in its entirety. Their accounts, as well as the accounts of five other witnesses who observed the event unfold in varying degrees, were consistent with the accounts given by the police officers involved. Also consistent with the several accounts of the event were the results of a scene examination and analysis conducted by evidence technicians, and a post-mortem examination conducted by Dr. Margaret Greenwald, the state’s Chief Medical Examiner.

Detectives from the Office of the Attorney General went to the scene of the shooting in South Gardiner to conduct the investigation. They were assisted in the investigation by several State Police detectives and technicians, as well as the Office of the Chief Medical Examiner and, later, the Maine State Police Crime Laboratory. Both the Gardiner Police Department and the State Police cooperated fully with the investigation and each agency is conducting its own internal departmental review of the incident.

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