

Report of the Attorney General on the Use of Deadly Force

November 18, 2011

In the early morning hours of April 10, 2011, Jonathan Mitchell, 29, of Veazie, was shot and seriously wounded by Portland police officer Robert Miller during a confrontation following a vehicle chase in Portland.

While working a night shift that started the late evening of April 9, 2011, Officer Robert Miller was in uniform and operating a marked Portland Police cruiser. At about 4:45 a.m. on April 10, Officer Miller overheard a call dispatched to other Portland units concerning a burglary in progress on Allen Avenue in Portland. From the dispatch, Officer Miller knew that the person who had called the police was a woman, that a man who was her former husband or domestic partner and prohibited by court order from having contact with her allegedly broke into her apartment, and then fled the home. The woman called 911 when the intruder refused to leave her apartment. Officer Miller also knew from the dispatch that the suspect was driving a black Volkswagen Jetta described as having numerous bumper stickers covering the rear of the vehicle. He also learned that the vehicle was possibly headed toward Washington Avenue.

Officer Miller was parked on Forest Avenue in Portland when he monitored the dispatch. He drove his cruiser along Washington Avenue while watching for the suspect vehicle. The traffic on Washington Avenue at that early hour of the morning was light. Near the intersection of Ocean Avenue, Officer Miller observed a black Volkswagen Jetta, which passed him going in the opposite direction. He immediately recognized the vehicle and believed it was the suspect's vehicle because it matched the description of the vehicle in the earlier dispatch.

Officer Miller reversed direction on Washington Avenue. The operator of the Volkswagen Jetta apparently saw him reverse direction and in response turned left onto East Kidder Street. Officer Miller was within ten feet of the Volkswagen Jetta when he notified Dispatch by radio of the suspect's vehicle plate number and that he was following the vehicle. At this point the speed of the Volkswagen Jetta was about 25 miles per hour. The Volkswagen turned right onto Sherwood Street. Officer Miller learned from Dispatch that the suspected operator, Jonathan Mitchell, was a habitual offender and was believed to be possibly under the influence.

When the suspect vehicle turned left onto Inverness Street, Officer Miller activated the blue lights on his cruiser to initiate a vehicle stop. When the vehicle failed to stop, Officer Miller activated the cruiser's siren. The speed of the Volkswagen Jetta was 20 to 25 miles per hour. The vehicle turned right onto Berkshire Street, then right onto Presumpscot Street, left back onto Sherwood Street, and then rapidly accelerated. The Volkswagen Jetta quickly moved far ahead of Officer Miller and was traveling at over 60 miles per hour. The area of travel was densely

populated with vehicles parked on both sides of the street, and some sections of the roadway so narrow that there was only room for one lane of travel at a time.

At the intersection of Sherwood and Veranda Street, the suspect vehicle ran a stop sign at a high rate of speed, and then turned sharply left onto Veranda Street. Officer Miller was still in pursuit, and the speed of the Volkswagen was now over 70 miles per hour. At about the same time that a police supervisor instructed that the chase be terminated, the Volkswagen Jetta turned onto Fairfield Street, a dead end street. As Officer Miller approached the end of the street, he observed the suspect vehicle partially on the lawn of a residence next to a guardrail marking the end of the street. Officer Miller positioned his cruiser about 10 feet from the Volkswagen Jetta, facing the driver's door at an angle. The cruiser's lights and siren remained operational.

Officer Miller quickly approached the vehicle on foot shouting for the driver to get out of the car. The Volkswagen backed into the street in such a fashion that it was perpendicular to Officer Miller's cruiser, and in a position to drive back toward Veranda Street. Officer Miller opened the driver's door of the Volkswagen, and repeatedly commanded the driver, Jonathan Mitchell, to turn the engine off and to get out of the car. In the meantime, Officer David Schertz arrived in another cruiser at the location and quickly approached the Volkswagen. As Mitchell drove forward several feet, Officer Miller and Officer Schertz stayed in motion with the vehicle, Miller at the open door and Schertz nearer the outer side of the open door. Officer Miller continued to issue commands. Officer Miller's multiple commands to Mr. Mitchell to turn the engine off and to get out of the vehicle went unheeded. Officer Schertz was near the middle of the dead end street and Officer Miller closer to the right side of the dead end street. The immediate area was confined – a dead end street, a private vehicle parked to the right of Officer Miller's position, his cruiser in the middle of the street, and Officer Schertz's cruiser behind Miller's cruiser. Officer Miller continued to issue commands to shut off the engine and to get out of the car. When Officer Miller reached into the vehicle in an attempt to grab Mr. Mitchell, Mitchell swatted his hand away. The Volkswagen then rolled backwards three to four feet and when it stopped moving, Officer Miller again tried to grab Mr. Mitchell through the fully opened driver's side door. The attempt failed and Officer Miller tried again.

At this point, Officer Miller was between the open door and the vehicle; Officer Schertz was immediately to his left, also generally between the open door and the vehicle but with Officer Miller between him and the vehicle. Officer Miller succeeded at grabbing and hanging onto Mr. Mitchell's outer clothing and, in response, Mr. Mitchell abruptly accelerated the Volkswagen in a forward direction. The sudden acceleration was so powerful that the rear of the Volkswagen fishtailed to the left and the tires spun on the pavement. This sudden movement of the vehicle resulted in both officers having to move quickly away from the vehicle, although the rapid and forceful forward motion of the vehicle initially caught Officer Miller off guard and pulled him with the vehicle while Officer Schertz attempted to remove himself from the path of the open driver's door by quickly moving to the outer side. Officer Miller released his hold on Mr. Mitchell and fired two shots at Mr. Mitchell. The Volkswagen continued to accelerate and sped off. Neither officer was aware at that time that Mr. Mitchell had been struck by gunfire.

About 25 seconds elapsed from the time that Officer Miller got out of his cruiser on Fairfield Street to the point when he fired the two shots at Mr. Mitchell.

Attempts to locate the vehicle or Mr. Mitchell proved fruitless until about an hour-and-a-half later when the Volkswagen Jetta was found in Portland. The vehicle was outside the apartment of the owner of the vehicle, a female friend of Mr. Mitchell's. There were two bullet holes in the rear driver's side window of the Volkswagen Jetta. Mr. Mitchell was found in the friend's apartment holding a towel to his neck. Mr. Mitchell had in fact been shot. The friend told police that she had allowed Mr. Mitchell to stay at her apartment off and on, but he was not there the evening before she went to bed nor did she know that he had taken her vehicle during the night. She told police that she was awakened very early in the morning by Mr. Mitchell, who asked her to come into the bathroom. She stated that she went into the bathroom and found Mr. Mitchell covered with blood. She told the police that Mr. Mitchell told her he had been shot by the police, but he did not remember anything else. Mr. Mitchell refused the woman's pleas to go to a hospital, but was taken to the hospital after the police arrived. The investigation disclosed that Mr. Mitchell was shot twice, once in the neck and once in the upper back. He survived the wounds.

Analysis and Conclusion

The Attorney General is charged by law with investigating any law enforcement officer who uses deadly force while acting in the performance of the officer's duties. The sole purpose of the Attorney General's investigation is to determine whether self-defense or the defense of others or the need to arrest or stop a dangerous person from escaping, as defined by law, is reasonably generated by the facts so as to preclude criminal prosecution. The review does not include an analysis of potential civil liability, whether any administrative action is warranted, or whether the use of deadly force could have been averted. Under Maine law, for an individual, including a law enforcement officer, to be justified in using deadly force in self-defense or the defense of others, two requirements must be met. First, the individual must reasonably believe that deadly force is imminently threatened against the individual or against someone else, and, second, the individual must reasonably believe that deadly force is necessary to counter that imminent threat.

In addition, under certain limited circumstances, a law enforcement officer is justified in using deadly force to make an arrest or prevent an escape. Specifically, a law enforcement officer is justified in using deadly force when the officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force, or otherwise indicates that the person is likely to seriously endanger human life, or to inflict serious bodily injury unless apprehended without delay. When using deadly force to make an arrest or prevent an escape, the officer must first make reasonable efforts to advise the person that the officer is a law enforcement officer, and the officer must have reasonable grounds to believe that the person is aware of this advice.

Whether a use of force 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 particular situation. The analysis requires careful attention to the facts and circumstances of a particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Attorney General William J. Schneider has concluded that at the time shots were fired at Mr. Mitchell by Officer Miller, it was reasonable for Officer Miller to believe that deadly force was imminently threatened against him and Officer Schertz, and it was reasonable for Officer Miller to believe that it was necessary for him to use deadly force to protect himself and Officer Schertz from the imminent threat of deadly force posed against them by Mr. Mitchell's actions. Moreover, Attorney General Schneider determined that Officer Miller reasonably believed that Mr. Mitchell had committed a crime involving the use or threatened use of deadly force, was likely to seriously endanger human life unless apprehended without delay, and that Mr. Mitchell knew that Miller and Schertz were law enforcement officers attempting to place him under arrest. The Attorney General's conclusions are based on an extensive scene investigation, interviews with numerous individuals, and review of all evidence made available from any source.

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