

NEWS RELEASE

Released by: Attorney General Michael A. Delaney
Subject: March 2, 2011 Officer Involved Shooting in Concord, NH
Date: April 4, 2011
Release Time: Immediate
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Attorney General Michael A. Delaney announces that the Attorney General's Office has made the preliminary determination that Concord Police Officers James Robert Fallon and Craig Levesque were justified in using deadly force when each officer shot at Wayne Martin, Jr. (Martin) on March 2, 2011. On March 4, 2011, the Acting Medical examiner determined that the cause of Martin's death was a gun shot wound of the torso with injury of the spinal cord, lung, liver and inferior vena cava.

An investigation by the Attorney General's Office and the New Hampshire State Police Major Crime Unit has revealed the following facts: On March 2, 2011, members of the Concord Police Department were dispatched to 4 Garvins Falls Road in Concord. The police were dispatched to that location because they had a notice of proposed revocation of conditional discharge. The notice indicated that Martin was believed to have violated a condition of his discharge. The condition that was violated was that he was to take all medications as prescribed but that Martin was not present for his medication on March 1st. In addition, the notice indicated that it was believed that Martin was in such a condition as to create a potentially serious

likelihood of danger to himself or others. The factor demonstrating the likelihood of danger was that when Martin was not on his medication he would decompensate quickly and would become a danger to himself or others. The police also possessed a complaint for compulsory examination pursuant to RSA 135-C:51, II, which requested that the police take custody of Martin and deliver him to the Concord Hospital emergency room where a compulsory examination would be conducted for the purpose of determining whether or not Martin's conditional discharge should be revoked in accordance with RSA 135-C:51, III.

The police arrived at 4 Garvins Falls Road shortly after 5:00 p.m. During that same time period Martin called 911. During the call Martin made statements such as: he told the mother f...ers to leave him alone, they had no right to make him take his meds every night, he was done sticking up for the United States of America, he was done being a NATO pilot and he would kill the 911 operator and her family. His tone of voice ranged from whispering to yelling. At times, his statements were nonsensical. When the police arrived at 4 Garvins Falls Road they were made aware that Martin was on the phone with the police department and that he was making threats. The initial officers to arrive at 4 Garvins Falls Road were Sergeant Clifford Kahrs and Officers Melissa Pfefferle and Levesque. The building at 4 Garvins Falls Road is a large barn type building containing numerous apartments on several floors. The police initially knocked on Martin's apartment door in an effort to take him into custody and deliver him to the Concord Hospital. Martin made no reply at first but within a few minutes began yelling. A neighbor informed the police that Martin had been agitated all day; that he had been yelling and banging stuff earlier in the day.

When Officer Pfefferle walked by Martin's window she heard him yell that he did not want to see their faces and that he was going to cut them up. The police were aware from prior contact with Martin that he was known to have knives and swords in his apartment. Further, the police were aware that the department's computer system had a caution, warning that Martin was known to have weapons.

The police had the dispatch operator contact Martin in an attempt to have him exit his apartment. These attempts were unsuccessful. While outside Martin's apartment door the police continued to hear Martin yell. Martin continued to curse, threaten to hack and cut the officers, and make nonsensical statements. Given that Martin refused to leave his apartment coupled with his threatening remarks, Sergeant Kahrs decided to evacuate the other occupants of the 4 Garvins Falls building. At this juncture, Officers Joshua Levasseur, Robert Fallon and Almadin Dzelic had arrived. As the building was being evacuated by Sergeant Kahrs as well as Officers Levasseur and Dzelic, the other officers stayed by Martin's apartment door. The occupants in apartment 26, an apartment around the corner from, but, in close proximity to Martin's apartment, would not respond to the officers' commands to evacuate.

In an attempt to have Martin exit his apartment the police requested assistance from a Riverbend counselor. When the Riverbend counselor arrived four police officers were at the end of a hallway near Martin's apartment. The counselor called to Martin but Martin did not respond. The counselor then called Martin's cell phone. The counselor placed approximately fourteen calls to Martin. Some of the calls went to Martin's voice mail. The counselor noted that he first called Martin at approximately 7:25 p.m. During the calls the counselor described how Martin yelled,

ranted and refused to exit his apartment. Martin stated that he was going to kill the police officers and mental health. As he yelled, Martin acknowledged that he was on a conditional discharge, that he knew had had not taken his medication in a few days and that he was not going to take his medication. At one point, the counselor heard Martin state he wanted the police to come in, to bring them in, and there will be bloodshed. The counselor described Martin's ranting as delusional and psychotic.

As the counselor attempted to talk with Martin, Martin was heard striking the door with an object. The sound was loud. At one point, Martin opened the door. The apartment was dark. Martin looked at Officer Levasseur and was talking about how he was owed money. Martin then motioned his hand as if he was throwing something at Sergeant Kahrs and Officer Levasseur. However, nothing was thrown. Martin then slammed his apartment door shut. Subsequently, Sergeant Kahrs yelled to Martin to come out of his apartment as he was under arrest. Martin did not respond. When the police realized that Martin was not going to exit his apartment, they began to make plans to call in the tactical team to handle the situation.

While Sergeant Kahrs spoke with the counselor, Officers Levasseur, Pfefferle, Fallon and Levesque were positioned outside of Martin's apartment. Martin was heard singing about killing and cutting. According to Officer Levasseur, Martin opened the door again and then slammed the door. Officer Levasseur did not see Martin when the door was opened. Within a few seconds, Martin opened the door yet again but he was not visible. Martin then stepped in the doorway. Officer Levasseur described how he saw Martin staring at him. Martin began to charge at Officer Levasseur. Because Martin's body was angled Officer Levasseur could not see

Martin's right hand. Officer Levasseur could not see a weapon in Martin's hand. However, as Martin charged at Officer Levasseur, Levasseur saw what he described as a hatchet in Martin's hand. Martin started to raise the hatchet as he closed the distance between himself and Officer Levasseur to within a step or two. Officer Levasseur stated that it looked like he was about to be killed. Officer Levasseur yelled "ax" and side stepped back. As Martin was quickly moving toward Officer Levasseur with the raised hatchet Officers Fallon and Levesque discharged their weapons. Officer Pfefferle discharged her Taser. Martin was hit by the gunfire and dropped to the floor essentially where Officer Levasseur had been standing. Martin was later confirmed to be deceased by medical personnel who tended to him. The scene was secured and the Attorney General's Office was notified pursuant to established protocol.

Further investigation by the State police revealed that a hatchet was found next to Martin's body. The handle of the hatchet was approximately 11 inches long with a 3 inch by 4 $\frac{3}{4}$ inch blade.

Under RSA 627:5, II (a), a law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. "Deadly Force" means any assault which the person commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. The Attorney General's Office has reached the preliminary determination that Officers Levesque's and Fallon's use of deadly force was justified

because the officers reasonably believed that Martin's conduct of charging at Officer Levasseur with a raised hatchet endangered Levasseur's life.

A final report regarding this investigation will be issued once the investigation is fully completed.

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