

**ATTORNEY GENERAL'S FINAL REPORT ON OFFICER INVOLVED**  
**SHOOTING IN CONCORD, N.H. ON MARCH 2, 2011**

**June 27, 2012**

Attorney General Michael A. Delaney announces that the Attorney General's Office has made a final 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. The final report in this matter is the product of an investigation by the New Hampshire Attorney General's Office and the New Hampshire State Police Major Crime Unit, with the assistance of the New Hampshire State Police Forensic Laboratory.

The investigation revealed that at approximately 1:30 p.m. on March 2, 2011, members of the Concord Police Department were dispatched to Martin's residence at 4 Garvins Falls Road in Concord to serve notice of a proposed revocation of conditional discharge. Martin had been a resident of the New Hampshire State Hospital in Concord, New Hampshire, after he was involuntarily committed per court order on December 20, 2007. In that order, Judge David D. King found clear and convincing evidence that Martin posed a threat to himself and others. The order noted that the term of commitment would not exceed five years, and that a conditional discharge would be ordered as soon as clinically appropriate.

On April 12, 2010, the New Hampshire State Hospital recommended Martin's conditional discharge, vesting responsibility for his treatment in the Riverbend Community Mental Health Center. The terms of his conditional discharge included that Martin take all prescribed medications and keep scheduled appointments with the Riverbend Community Mental Health Center. Failure to abide by these terms would result in revocation of Martin's conditional discharge through December 19, 2012.

On March 2, 2011, Martin's treating psychiatrist reported that Martin failed to take his medications on March 1, 2011, and noted that this failure was likely to result in Martin's decompensation, rendering him a danger to himself and others. When Riverbend personnel tried to approach Martin after his missed appointment, they noted that he became argumentative and angry, leaving staff fearful for their safety.

Martin's dangerousness at the time was a matter of public record. Martin had a substantial criminal record, including convictions for criminal mischief (2003), resisting arrest (2004), breach of bail conditions (2004), driving after revocation or suspension (2004), criminal contempt (2005), simple assault on a police officer (2004), and criminal trespassing (2010). Martin was also charged with counts of first degree assault, second degree assault, and assault on prisoners between 2005 and 2007, but these cases are ones in which there is either no reported outcome or in which the cases were dismissed or nolle prossed. A Riverbend counselor noted that that Martin had a history of significant interpersonal violence, which included committing an assault on a family member leading to his arrest and a court finding of incompetency.

Police responded to Martin's address with the notice of conditional discharge described above in-hand on the afternoon of March 2, 2011. The notice indicated that Martin was believed to have violated a condition of his discharge by failing to take his medication. The notice indicated that Martin was a danger to himself and others when not medicated. 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. Martin was not at home when police initially went there to serve the notice and complaint.

The police went to 4 Garvins Falls Road again shortly after 5:00 p.m. when they learned from a neighbor that Martin had returned home. During that same time period, Martin called 911 and made the following statements: "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." Martin's 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, including threats of violence and threats to kill people.

The initial officers to arrive at 4 Garvins Falls Road were Sergeant Clifford Kahrs and Officers Melissa Pfefferle and Craig 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 and that he had been yelling and banging inside the apartment earlier in the day.

Officer Pfefferle walked by Martin's window after she arrived. When she did so, she heard Martin 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 hidden throughout his apartment. The police were also aware that the department's computer system had a 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 and resulted in a stand-off. While outside Martin's apartment door, the police continued to hear Martin yell from inside. Martin cursed at police and threatened to hack and cut the officers. At one point, Martin also claimed to be armed with a machine gun and said he would "shoot everyone."

In light of Martin's refusal to leave his apartment and his threatening remarks, Sergeant Kahrs decided to evacuate the other occupants of the 4 Garvins Falls building. By this juncture, Concord Police Officers Joshua Levasseur, Robert Fallon and Almadin Dzelic had arrived. As Officers Kahrs, Levasseur and Dzelic evacuated the residents of the building, 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.

The counselor described how Martin yelled, ranted and refused to exit his apartment during the calls. Martin stated that he was going to kill the police officers and mental health staff. As he yelled, Martin acknowledged that he was on a conditional discharge, that he knew 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 and that there would 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. Officers believed the sound was consistent with an axe striking the door and wood splintering. Later, a search revealed that the door had three hatchet marks on the other side of the door from where the officers were standing when they heard the hatchet strikes.

Shortly afterward, Martin opened the door. Officers reported that his apartment was dark. Martin looked at Officer Levasseur and was talking about how he was owed money. Martin abruptly motioned his hand as if he was throwing something at Sergeant Kahrs and Officer Levasseur. Martin then slammed his apartment door shut. Sergeant Kahrs yelled to Martin to come out of his apartment as he was under arrest. Martin did not respond.

Around 8:00 p.m., police concluded that Martin was not going to exit his apartment. They began to make plans to call in the tactical team to handle the situation. The officers provisionally discussed a number of strategies they would undertake depending on how Martin exited the apartment. They agreed that whether the officers responded with force and the extent of the force they used would depend upon the threat Martin presented when he exited the apartment.

While Sergeant Kahrs spoke with the Riverbend counselor down the hall from the apartment, Officers Levasseur, Pfefferle, Fallon and Levesque were positioned outside of Martin's apartment. They heard Martin singing about killing and cutting people on the other side of the door. According to Officer Levasseur, Martin opened the door again and then slammed the door. When the door was open, Martin motioned with his hand as if he were throwing something at Officer Levasseur, however, nothing was thrown.

Within a few seconds, Martin opened the door yet again but was not initially visible. Martin then stepped in the doorway. Officer Levasseur described Martin as staring at him. Martin then began to charge at Officer Levasseur. Because Martin's body was angled, Officer Levasseur could not see Martin's right hand. Officer Levasseur prepared to be assaulted by Martin as Martin came through the door at him. Levasseur did not initially realize Martin was carrying a weapon as Martin charged at him.

As Martin closed the gap between himself and Officer Levasseur, Levasseur saw what he described as a hatchet in Martin's hand. Martin raised the hatchet as he came within a step or two of Levasseur. Officer Levasseur later stated that he thought he was about to be killed by Martin. Officer Levesque also said he believed Martin was going to kill Officer Levasseur.

Officer Levasseur yelled "axe" and side stepped back as Martin charged him. Officers Fallon and Levesque then discharged their weapons. Officer Pfefferle discharged her Taser. Officers stated that the shots were fired in a matter of seconds while Martin was charging at Levasseur. Martin was hit by the gunfire and dropped to the floor in the area 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 4¾ inch blade.

An autopsy conducted on Martin revealed that he suffered three gunshot wounds, two to the left side of his back, one to the right side of his back. The gunshot wound to Martin's upper left back severed his spine, right lung, diaphragm and liver. It also severed the vena cava, a large vein carrying blood into the heart. Martin bled internally from this gunshot wound. This wound is the one most likely to have caused Martin's death, given the degree of damage it did to vital organs of his body.

The gunshot wound to Martin's lower left back traveled through back muscle and fractured a portion of Martin's spine. Both wounds to the left side of his back followed a similar path of left to right and downward through Martin's body.

The gunshot wound to the right side of Martin's back, on the other hand, was located in the center of his back, travelled right to left without significant vertical deviation. It traveled just under Martin's skin and did not injure any major organs.

Police examined the guns of each of the officers who were at the scene during the shooting. Each officer carried a .40 caliber pistol with a magazine of 12 bullets. Officer Pfferle's magazine was fully loaded, confirming she did not fire on Martin that night. Officer Levasseur's magazine was fully loaded, confirming he did not fire on Martin that night.

Officer Levesque's magazine contained 10 cartridges, two cartridges short of a full magazine, suggesting that he fired two shots. Officer Fallon's magazine contained 11 cartridges, one cartridge short of a full magazine, suggesting that he fired one shot. Three .40 caliber cartridges were recovered from the scene, consistent with the three gunshot wounds to Martin's body and the three cartridges missing from Officer Fallon's and Officer Levesque's guns.

Officers at the scene stated that Officer Levesque was to Martin's left and would have been facing Martin's back as he charged at Officer Levasseur. The contents of Officer Levesque's magazine suggested that he fired two bullets. The two wounds to the left side of Martin's back traveled in the same direction through his back. Officer Fallon, on the other hand, was positioned closer to Martin's side as Martin charged Officer Levasseur. The directionality of the gunshot wound to Martin's right side traversed his back along the surface of his skin and lacked an upward or downward trajectory.

The New Hampshire State Police Forensic Laboratory conducted a test firing of Officer Levesque's and Officer Fallon's firearms and concluded that each functioned normally. Because officers used the same caliber firearms and ammunition, and because the bullets themselves were found to be deformed when removed from Martin's body, further ballistic testing to determine which bullet was associated with which of the officer's firearms was deemed unlikely to yield meaningful results.

Under RSA 627:5, II (a), a law enforcement officer is justified in using deadly force 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. Under RSA 627:9, II, "Deadly Force" means any assault which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person constitutes deadly force under RSA 627:9, II.

Applying this standard, the Attorney General's Office has reached a final determination that Officers Levesque's and Officer Fallon's use of deadly force was justified in this case. When the officers shot at Martin, they reasonably believed that Martin's conduct, in charging at Officer Levasseur with a raised hatchet, endangered the life of a third person, Officer Levasseur.

The reasonableness of their belief was reinforced by a number of factors surrounding their interaction with Martin. Officers were there in the first instance because Martin had violated the conditions of his conditional discharge from the New Hampshire State Hospital. Martin had been committed to the hospital because of violent tendencies. After he was conditionally discharged, his treating psychiatrist opined that Martin was dangerous when off prescription medicine. Martin had not taken his medicine the day before he was killed, prompting the police response in this case.

Police at the scene further knew that Martin had a history of criminal violence, and that he hid weapons in his apartment from prior experiences with him. Their concern over Martin's dangerousness was only augmented when they arrived at his apartment and he engaged in a prolonged standoff with them. Over the course of the three-hour period they waited for Martin to exit, Martin threatened the police with extreme violence, including threats to kill them by cutting them up. These threats did not abate, though police took the reasonable measure of seeking assistance from a counselor from the Riverbend Community Mental Health Center.

Indeed, just prior to exiting the apartment, Martin not only threatened police, he began to hit his side of the door with an axe, and made threatening gestures at police after opening the door quickly. Even under these circumstances, however, it was not the officers' first instinct to fire on Martin when he exited. It was only after Martin charged at Officer Levasseur and Levasseur noticed that the defendant was wielding an "axe," that Levasseur yelled "axe" to his fellow officers. It was at this point that Officer Levesque developed the view that that Martin was an imminent threat to Officer Levasseur's life and Officer Levesque and Officer Fallon shot at Martin. Their actions under these circumstances constituted the necessary use of force under circumstances where their colleague was himself threatened with imminent deadly force. Cf. State v. Etienne, 163 N.H. 57, 70-76 (2011). Officer Levesque and Officer Fallon were therefore justified in their use of deadly force against Martin to protect Officer Levasseur from Martin's deadly violence.