

FINDINGS OF ESSEX DISTRICT ATTORNEY JONATHAN W. BLODGETT
REGARDING OFFICERS INVOLVED FATAL SHOOTING ON
AUGUST 23, 2013 AT DANVERS, MASSACHUSETTS

The Essex County District Attorney's Office and the Massachusetts State Police assigned to the Essex County District Attorney's Office have concluded its investigation into the August 23, 2013 death of Scott Kehoe who was shot by Danvers Police officers in the area of Kirkbride Drive in Danvers.

The Essex County District Attorney's Office, by statute, has the duty and authority to oversee all death investigations in Essex County. As such, the goal of this investigation was to determine if the fatal shooting of Mr. Kehoe by on-duty police officers was legally justified.

This investigation included a review of the following: interviews with civilian witnesses who were in contact with Mr. Kehoe during the time leading up to the shooting or who were in the area when the shooting occurred; interviews with the responding Danvers and Massachusetts State Police officers, evidence found at the scene, analysis of radio transmissions, interviews with the Chief Medical Examiner, a Massachusetts State Police ballisticsian, and police reports.

A determination as to whether or not the actions of the involved police officers could constitute a criminal act must be considered in light of the applicable case law and legal precedent on the use of force by law enforcement. To be a lawful use of deadly force, the actions of the officers must be objectively *reasonable*, given all of the facts and circumstances confronting them at the scene. The determination of such reasonableness is judged from the perspective of a reasonable officer at the scene and in that moment in time and not through the perspective of hindsight. As stated by the United States Supreme Court, "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation."

The investigation revealed the following facts:

1. On August 22, 2013 at 9:52 PM, Danvers Police dispatch received a call from a Kirkbride Drive neighbor of Scott Kehoe, who reported that Kehoe had assaulted her 19-year-old son earlier that day.
2. Sergeant Paul Stone, Officers Dana Martin, Kevin Wood and Peter Shabowich were subsequently dispatched to the caller's address. Upon arrival, officers interviewed the alleged victim and learned that earlier that evening he was at the apartment of another Kirkbride Drive neighbor, a 37-year-old man (Witness A), with Kehoe.
3. Officers learned that Kehoe accused the alleged victim of stealing his son's headphones. After the alleged victim denied taking the headphones, Kehoe grabbed him and slammed his head against the window and windowsill repeatedly. Kehoe then held the alleged victim's head against the windowsill and hit him in the head with the butt end of a knife. Kehoe began putting his hands into the alleged victim's pockets, while holding a sharp

object to his neck. The alleged victim was eventually able to escape Kehoe's grasp while Witness A was able to hold off Kehoe.

4. Officers assembled in front of the 5000 building on Kirkbride Drive. They were aware that Kehoe had outstanding warrants for home invasion, kidnapping, witness intimidation, resisting arrest, larceny, burglary, disorderly conduct, and disturbing the peace.
5. Officer Wood subsequently reported that, as he was entering the Kirkbride Apartment Complex, he had seen a male, fitting Kehoe's description, walking along the tree line. In addition, Witness A told Officer Shabowich that he believed Kehoe had fled to the woods because he knew that he had outstanding warrants. Therefore, officers believed that Kehoe could be hiding in the wooded area adjacent to his apartment building.
6. At approximately 11:00 PM, Danvers K-9 Officer Justin Ellenton was dispatched to the scene with his K-9, Falco. Officer Ellenton and his dog conducted a search of the wooded area adjacent to Kehoe's apartment building. The search was unsuccessful in locating Kehoe.
7. At 11:38 PM, while police were still on the scene searching for Kehoe, Danvers Police dispatch received a call from Witness A, who reported that he had just spoken to Kehoe on the phone and that Kehoe said that he was back in his apartment. Witness A further informed dispatch that Kehoe spoke to him about committing "suicide by cop," that Kehoe asked him for a pocket knife, and that Kehoe believed that the police would beat him to death. Officers at the scene were advised of Kehoe's statements concerning suicide by cop. In addition, Sergeant Stone was aware that Kehoe had a history of violence and had psychiatric issues.
8. At 11:50 PM State Police at Danvers were contacted via telephone and were requested to send assistance.
9. Learning that Kehoe was in his apartment, Officers Ellenton and Wood went to the rear of the Kehoe apartment, #5113, which was located on the first floor. Officer Ellenton looked in the window and confirmed that Kehoe was in the apartment.
10. A short time later, Officer Ellenton saw Kehoe run out of the apartment. Officer Ellenton then transmitted, via radio, to officers in the front of the building that Kehoe was on his way out of the building.
11. At 12:03 AM Sergeant Stone, Officers Martin and Shabowich were joined by State Police Sergeant Eric Bernstein and Trooper Dale Jenkins in the front of the apartment building. Officers Ellenton and Wood subsequently joined them.
12. Officer Shabowich was in front of the building and saw Kehoe run from the building with a shiny object in his hand that looked like a knife.

13. Kehoe ran directly at Trooper Jenkins. Trooper Jenkins attempted to tackle Kehoe but when he saw something in Kehoe's hand, he pushed Kehoe against a car. Trooper Jenkins' contact with Kehoe resulted in a long, straight, superficial laceration to Jenkins' right biceps.
14. Kehoe ran between several parked vehicles and then to a grassy area adjacent to the front parking lot. Kehoe stopped, turned, and faced the officers pursuing him. The officers had their backs to the front of the apartment building while Kehoe was facing the front of the building and the officers.
15. At this point, it was clear that Kehoe was brandishing a knife. All officers loudly commanded Kehoe to drop the knife and get down on the ground.
16. Kehoe was making aggressive stabbing and jousting motions at the officers as they continued to yell at him to drop the knife and get down on the ground.
17. In an attempt to subdue Kehoe, Officer Ellenton lined up his K-9, Falco, in the direction of Kehoe and released him. The dog made contact with Kehoe's left leg but was unsuccessful in taking Kehoe down. Kehoe attempted to stab the dog. Officer Ellenton then retrieved the dog and returned the dog to his cruiser.
18. Sergeant Stone was attempting to negotiate with Kehoe to drop the knife when Kehoe began to chase Sergeant Stone with the knife. Sergeant Stone made a full running retreat from Kehoe. Sergeant Stone thought that Kehoe was going to stab him as he was running to the other officers.
19. Kehoe's attention was subsequently turned to Officer Shabowich who was also yelling commands to drop the knife.
20. Kehoe charged at Officer Shabowich and got within six feet of him. Officer Shabowich aimed his firearm in a low downward direction and fired three (3) shots, striking Kehoe in the leg with the third shot.
21. Kehoe stumbled but continued towards Officer Shabowich with the knife.
22. Seeing this continued aggressive behavior, Officer Ellenton discharged his firearm, five times, striking Kehoe multiple times. (See # 27 for location of wounds.)
23. Though injured, Kehoe, on the ground, continued to kick at the officers and attempted to get up from the ground. Officers had to maintain control of him while they attempted to render first aid.
24. The officers' account was corroborated by a twelve-year-old resident of Kirkbride Drive (Witness B), who was walking his dog when he saw Kehoe run from the building with a knife in his hand. He saw Kehoe run to the area near the parked police cars. He heard

the police commands to “drop the knife” and “get down on the ground.” He described Kehoe’s conduct as being “out of control.”

25. Within one minute of the shooting, Danvers Fire and Lyons Ambulance were dispatched to the scene. Kehoe was transported to Beverly Hospital where he was subsequently pronounced dead.
26. A knife was recovered on the ground next to where Kehoe had fallen. The knife is a black handled kitchen steak knife with a four inch blade.
27. An autopsy was conducted at the Office of the Chief Medical Examiner by Dr. Henry M. Niels, but as of the date of this report results have not been released. However, preliminary findings, based upon Dr. Niels’ observations, suggest that Kehoe sustained gunshot wounds to right side chest, right thigh, left side chest, front of right calf and right forearm.
28. Massachusetts State Police Crime Scene Services recovered at the scene seven (7) cartridges consistent with discharge from a semi-automatic weapon, five (5) casings were consistent with the Ellenton firearm and two (2) were consistent with the Shabowich firearm. Efforts to recover the eighth (8th) casing were unsuccessful.
29. While the ballistic report has yet to be finalized as of the date of this report, a Massachusetts State Police ballisticsian made verbal representation of the above mentioned findings.
30. Witness A later informed officers that two days previous, he filled prescriptions for Lyrica and Adderall. After Kehoe left his apartment he noticed that the prescription quantities were significantly depleted. Lyrica is sometimes utilized to manage nerve pain. One of the side effects may be suicidal thoughts or behavior. Toxicology results are not completed. This issue may deserve further comment if the toxicology results include evidence of Lyrica in Kehoe’s system.

CONCLUSION

Based upon the facts presented and applying the case law pertaining to the use of force to defend oneself or another, it is determined that the officers were in imminent danger of being stabbed by Kehoe and that he posed an immediate danger of killing or seriously injuring others.

Kehoe ignored repeated commands to drop his weapon and charged at and attempted to stab a Massachusetts State Police trooper (Jenkins), a K-9 (Falco) and a Danvers Police officer (Shabowich). He continued to brandish his weapon and move toward officers even after Officer Shabowich fired shots into the ground in an effort to stop him. After he continued to move toward officers despite being shot in the leg, Officer Ellenton reasonably believed that his fellow officers were in danger of serious injury or death and therefore his actions were justifiable.

This matter, per protocol of the Essex District Attorney's Office, is now referred back to the Danvers Police Department, such that any internal administrative review of the incident, that is deemed appropriate, may be conducted.