



INVESTIGATION INTO THE DEATHS OF
SPECIAL AGENT JOHN CAPANO
AND JAMES McGOEY

July 16, 2012

KATHLEEN M. RICE
DISTRICT ATTORNEY

ShastaDefense.
com NOTE:
Following Materials
for purpose of
showing risks of
mistaken identity
shooting. Good
guy is shot dead.
For applicable law,
consult California
Attorney.

CONTENTS

I. INTRODUCTION	1
II. THE ROBBERY AND THE SHOOTINGS	2
III. THE INVESTIGATION	5
IV. INCONSISTENCIES AMONG THE STATEMENTS OF THE WITNESSES.....	6
V. THE DEFENSE OF JUSTIFICATION.....	7
A. CHRISTOPHER GERAGHTY’S USE OF DEADLY PHYSICAL FORCE .	8
B. OFFICER JOSEPH ARBIA’S USE OF DEADLY PHYSICAL FORCE	10
VI. CONCLUSIONS	10

I. Introduction

On December 31, 2011, James McGoey set in motion a chain of events that led to his own death and the death of John Capano, a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives. On the afternoon of New Year's Eve, McGoey entered a pharmacy in Seaford, New York, threatened the employees with a gun, and stole drugs and money. In the midst of this, Agent Capano entered the pharmacy, unaware that a robbery was in progress. When he realized what was happening, Capano drew his gun and shouted to the fleeing McGoey to drop his weapon. McGoey did not drop his gun but, instead, aimed it at Agent Capano. Agent Capano shot at McGoey, hitting him in the buttocks, and pursued him as he attempted to flee.

In the meantime, a pharmacy employee had run to a nearby delicatessen and screamed that the pharmacy was being robbed. Christopher Geraghty (the owner of the delicatessen and a retired Nassau County police lieutenant) and Joseph Arbia (an off-duty New York City police officer) ran to the pharmacy. Both were armed with guns. On the ground outside the pharmacy were Agent Capano and McGoey (neither of whom was known to Geraghty or Arbia), wrestling over a handgun which was later determined to be Capano's. Both Geraghty and Arbia announced that they were police officers, and Geraghty yelled at the men to drop the gun. When this order was ignored, Geraghty, holding his weapon in his right hand, jumped behind the man closest to him (Agent Capano), put his left arm around Agent Capano's neck in an attempt to pull him back, and tried to grab the weapon Capano and McGoey were fighting over. Agent Capano turned in such a way that the gun faced Geraghty, and a shot from Agent Capano's gun flew past Geraghty's ear. Believing that this unidentified armed man was trying to shoot him, Geraghty put his gun to Agent Capano's rib cage and fired. Capano fell. McGoey, kneeling within arm's

length of a handgun on the sidewalk, refused to show his hands after ordered to do so by Officer Arbia. Arbia fired three shots at McGoey. Agent John Capano and James McGoey both died of their gunshot wounds.

An extensive investigation ensued. This report summarizes the evidence obtained from Mr. Geraghty, Officer Arbia, witnesses to the robbery and/or the shooting, police who responded to the scene, crime scene investigators, F.B.I. ballistics technicians, and the medical examiner, as well as tapes taken from surveillance cameras in the pharmacy. The report sets forth the reasonable conclusions of fact, the law applicable to the facts, the District Attorney's determination of the appropriate action to be taken based on both, and the reasoning behind that determination.

II. The Robbery and the Shootings

On the afternoon of December 31, 2011, James McGoey entered Charlie's Family Pharmacy on Merrick Road, in Seaford, New York. Videotapes from the store's security cameras show McGoey striding through the store to the prescription counter in the back, walking directly into the drug dispensing area behind the counter, and displaying a gun to the clerk. According to the clerk, McGoey demanded drugs. The clerk called to the pharmacist, who was having lunch with another employee in a room behind the pharmacy counter. When the pharmacist came out, McGoey demanded Opana, an addictive semi-synthetic opioid painkiller, which the pharmacist took from a drawer and put into a bag that McGoey had brought with him. McGoey then demanded cash. As the clerk was emptying the cash register, John Capano entered the store through a back door beside the drug dispensing area. Capano, an off-duty agent with the Department of Alcohol, Tobacco, Firearms and Explosives, was a regular customer of the

pharmacy. Immediately upon seeing what was happening, Capano put his hands up and began to back up. McGoey repeatedly said, “Don’t do anything -- I’ll shoot,” and then turned and ran down the pharmacy aisle toward the front door. At this point, Capano took his gun from his waistband and screamed at McGoey to “drop the gun.” McGoey responded by aiming his gun at Agent Capano, who then shot at McGoey. Capano’s bullet hit McGoey in the right buttock. McGoey tumbled out the pharmacy door, and Capano followed.

As this was happening, a pharmacy employee escaped through the door in the rear office and ran to a delicatessen three doors down. There, she screamed that the pharmacy was being robbed and that the robber had said he was going “to kill everyone.” Christopher Geraghty, the owner of the deli and a retired police officer, retrieved his gun from his basement office. He and Joseph Arbia, an off-duty New York City police officer who was a customer in the deli, went out the back door and around the parking lot to the front of the pharmacy, where they came upon two men fighting on the sidewalk, grappling over a gun. Both men’s hands were on the gun.

The pharmacist, who had his own loaded handgun, had come to the front of the pharmacy to aid Agent Capano. He, too, saw Capano and McGoey chest-to-chest in a struggle on the sidewalk. He did not see the men holding any weapon, but he heard McGoey say, “I’ve got your gun. I’m going to shoot you.” Several times, the pharmacist called out to Capano, “John, what do I do?” but Capano seemed not to hear him.

Geraghty and Arbia both yelled that they were police officers and ordered the men on the ground to drop the gun. When there was no response, Geraghty jumped on the back of the man nearer to him (Agent Capano). With his own gun in his right hand, Geraghty put his left arm around Capano’s neck and reached around him in an attempt to gain control of the gun over

which Capano and McGoey were fighting. Through all of this, Geraghty repeatedly yelled, “Who’s the bad guy?” to which he got no response.

As Geraghty had his left arm around Capano’s neck, Capano turned, and his hands jerked over his (Capano’s) right shoulder, toward Geraghty’s head. Geraghty could see down the barrel of the gun that the men had been fighting over and believed that the man he had jumped on was the man who had robbed the pharmacy and that that man was trying to shoot him. Two shots were fired. One of those shots was fired from Agent Capano’s gun, about sixteen inches from Geraghty’s head. The other was Geraghty’s shot, from his own gun, into Agent Capano’s right side.

When the first shot was fired, Officer Arbia saw a silver gun on the sidewalk near the men who were grappling on the ground. After the second shot, Arbia moved to within three feet of McGoey, who was then on his knees, within arm’s reach of the spot where Arbia had seen the gun. Arbia ordered McGoey to show his hands. When McGoey did not comply, Arbia fired two shots at him. He looked to see whether he had hit him, and then fired a third shot, after which McGoey fell to the ground.

Agent Capano was taken to the hospital, where he was pronounced dead. Ballistics tests confirmed that the bullet that killed Agent Capano had entered his right side, about mid-chest, and was fired from Christopher Geraghty’s gun.

James McGoey was shot four times and died at the scene of the shootings. The shot to his buttock came from Agent Capano’s gun. The three other shots -- one to the back of his thigh and two to his chest -- came from Officer Arbia’s gun. McGoey’s weapon was a pellet gun that was inoperable when tested by the F.B.I.’s laboratory.

Christopher Geraghty was taken to the hospital after telling officers at the scene that he could not hear, apparently as a result of the gun shot close to his head. According to a police officer who accompanied Geraghty in the ambulance, Geraghty held his ear during the entire ride. He told the officer in the ambulance that he shot Agent Capano only after a bullet was shot near his head, and this was his assertion during an interview at the District Attorney's Office. Speaking to the police, he said that he was unsure about the sequence of the shots. The accounts of some of the other witnesses suggest that Geraghty shot first.

III. The Investigation

Detectives from the Nassau County Police Department and members of the District Attorney's Major Offense and County Court Bureaus interviewed Christopher Geraghty, New York City Police Officer Joseph Arbia, the pharmacy employees who were working at the time of the robbery, others who saw and/or heard parts of what occurred outside the pharmacy, and the Nassau County police officers who responded to the scene. Ballistics evidence was collected and was analyzed by the Federal Bureau of Investigation, which sent its findings to the District Attorney. Autopsies were conducted on the deceased, and the Office of the Nassau County Medical Examiner reported its findings to the District Attorney. The District Attorney's Office obtained videotapes from eight surveillance cameras in the pharmacy and additional video of the aftermath of the robbery and shootings. The evidence was studied and evaluated in an attempt to reconcile sometimes conflicting memories and perceptions from multiple witnesses, each of whom had seen only portions of what had occurred, and to reach a reasonable and reliable conclusion as to the events that culminated in the deaths of Agent John Capano and James McGoey.

IV. Inconsistencies among the Statements of the Witnesses

As would be expected, not all of the witnesses' accounts of the events are consistent in every respect, and not all are consistent with the objective forensic evidence. There are minor inconsistencies, like, for example, Officer Arbia's recollection that he followed Christopher Geraghty down the alley to the sidewalk in front of the pharmacy, which is inconsistent with Geraghty's recollection that Arbia led the way, and Geraghty's recollection that McGoey was sitting up when he was shot, as compared to Officer Arbia's recollection that McGoey was on his knees.

There are differences of perception as well. For instance, neither Arbia nor the pharmacist saw a gun in the hands of Capano and McGoey as they struggled, while Geraghty and a deli employee both stated that they saw the men grappling over the gun. As was eventually and tragically confirmed, there was indeed a gun.

There are, of course, flaws and lapses of memory, such as Christopher Geraghty's uncertainty as to whether he fired his weapon before or after a gunshot flew close to his head. And there are inconsistencies and lapses as to the number of shots that people heard and the point of entry of the bullet that shot Agent Capano.

But none of this raises either a suggestion or even a suspicion of lying on the part of any of the witnesses to this terrifying event. Rather, these are the differences in reporting that result from the varying perceptions of different people, arriving at the scene at different times, and with different information, different levels of awareness, and different expectations. Some said that they did not hear things that several other witnesses had heard, or that they did not see things that had clearly happened, or that they were unaware of anyone else at the scene. There is no question that some witnesses were so completely focused on certain aspects of the unfolding

events that they were insulated from other aspects, and each witness obviously functioned in the terror and chaos of the moment. Thus, the purpose of the investigation here was two-fold: to attempt to reconcile the witnesses' statements and the forensic evidence in order to determine what actually happened; and to apply the criminal law as it pertains to the defense of justification in order to determine whether there is criminal liability for either of these deaths.

V. The Defense of Justification

Christopher Geraghty and Joseph Arbia came upon a scene that posed deadly danger not only to the two men grappling over a gun, but to anyone who happened upon this busy commercial area on the Saturday afternoon of New Year's Eve. In response, Geraghty unquestionably used deadly physical force¹ against John Capano, and Officer Arbia likewise used deadly physical force against James McGoey. The force employed caused the death of the two men against whom it was used. With respect to each shooting, the pertinent question is whether the use of this deadly physical force was legally justified in accord with the provisions of the Penal Law. Phrased another way, the question is whether it would be possible to disprove a defense of justification beyond a reasonable doubt. See Penal Law §§ 25.00(1), 35.00. The evidence here clearly establishes the defense of justification with respect to both shootings, and it would not be possible to disprove that defense beyond a reasonable doubt with respect to either shooting.

The defense of justification is set forth in article 35 of the Penal Law, which provides that the use of physical force that would otherwise be prohibited is justified when it:

is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation

¹ Penal Law § 10.00(11) defines deadly force as physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

(Penal Law § 35.05[3].) Penal Law section 35.15(2)(a) provides that deadly physical force -- as compared to mere physical force -- is justified and not criminal when employed against a person under such circumstances that “[t]he actor reasonably believes that such other person is using or about to use deadly physical force.” The use of deadly physical force is justified by law, therefore, when an individual honestly believes that deadly force is necessary to defend against an aggressor who is using deadly force, and when a reasonable person in that individual’s position would believe the same. See People v. DiGuglielmo, 75 A.D.3d 206, 215-16 (2d Dept.), aff’d, 17 N.Y.3d 771 (2010).

a. Christopher Geraghty’s Use of Deadly Physical Force

To warrant criminal charges against Christopher Geraghty, the prosecution would have to be able to present conclusive proof that Geraghty did not reasonably believe that Agent Capano was about to use deadly physical force against him and/or another person. The situation Geraghty confronted was a struggle over a gun by two unidentified men. Geraghty reasonably (and correctly) believed that one of these men had just committed an armed robbery. When Geraghty joined the struggle in an attempt to grab the weapon and end the obvious threat to anyone in the vicinity, he found himself looking down the barrel of a gun that he perceived to have been pointed at him by John Capano. Geraghty then believed that Capano was attempting to kill him. That belief may have been mistaken, but it was not objectively unreasonable.

As discussed, the law provides that the conduct of a person claiming to have acted in self-defense is judged under a standard of reasonableness. See People v. Magliato, 68 N.Y.2d 24, 29 (1986); People v. Borrero, 118 A.D.2d 345, 349-50 (1st Dept. 1986); People v. Rodriguez, 111 A.D.2d 879 (2d Dept. 1985). And so, a person who used deadly physical force against another may be entitled to a defense of justification even if he was mistaken in his belief that deadly force was about to be used against him, as long as his mistake of fact was both “honestly held and reasonable.” C.J.I.2d (N.Y.) Justification; see Donnino, Practice Commentary, McKinney’s Cons Laws of NY, Book 39, Penal Law § 35.00, at 240. Thus, the determination whether Geraghty’s conduct was justified does not depend on whether he was mistaken about Agent Capano’s intent, but only on whether his belief concerning Capano’s intent was reasonable. Nor does it depend on whether a bullet had already been fired near Geraghty’s head, because if his fear of deadly physical force was reasonable, it was reasonable immediately upon the pointing of the gun at him. The prosecution would be unable to prove that a man looking down the barrel of a gun was unreasonable in his belief that deadly physical force was about to be used upon him. See People v. Umali, 10 N.Y.3d 417, 425 (2008) (to disprove a justification defense, “the People must demonstrate beyond a reasonable doubt that the defendant did not believe deadly force was necessary or that a reasonable person in the same situation would not have perceived that deadly force was necessary”) (citing People v. Goetz, 68 N.Y.2d 96, 115 [1986]).

All of this notwithstanding, the Penal Law precludes the use of deadly physical force, even in the face of deadly physical force, when a threatened person knows that it is possible to retreat “with complete physical safety to himself and others.” Penal Law § 35.15(2)(a). But Christopher Geraghty could not have known that he could retreat “with complete physical

safety” from the gun that was pointing at him, and the People would be unable to prove otherwise.

b. Officer Joseph Arbia’s Use of Deadly Physical Force

Officer Arbia had come to the scene of a struggle over a gun, following an armed robbery. He had just heard two gunshots. He faced James McGoey, who was on the ground, within arm’s reach of a handgun. When McGoey ignored the officer’s order to show his hands, the officer fired his weapon, killing McGoey.

It would not be possible to establish that Officer Arbia’s use of deadly physical force was unjustified under the Penal Law. The officer faced the potential use of deadly physical force against both himself and any member of the public in the vicinity, at the hands of a man who had just committed an armed robbery, who had immediate access to a gun, and who had refused to comply with the officer’s order. Moreover, the law specifically exempts a police officer from the duty to retreat if he knows that he may safely do so. See Penal Law § 35.15(2)(a)(ii). But even if that were not the case, the People could not establish that there was any safe retreat from a man kneeling within reach of a gun, just as the People would be unable to prove that it was unreasonable for Officer Arbia to have believed that deadly physical force was about to be used against him. See People v. Umali, 10 N.Y.3d at 425.

VI. Conclusions

The investigation conducted by the District Attorney’s office, in conjunction with the Nassau County Police Department, establishes that James McGoey strode into a Seaford pharmacy, terrorized the employees with a gun, committed a robbery, and thereby set in motion the chain of events that led to his own death and the death of Agent John Capano.

In the course of McGoey's flight from the robbery, and Agent Capano's attempt to thwart that flight, the two men became embroiled in a struggle on the sidewalk outside the pharmacy. Each man was attempting to gain control of a gun. When Christopher Geraghty attempted to intervene in this potentially lethal fight, he found himself in circumstances that he reasonably believed threatened his own life. He came to be in these circumstances because he responded to a call for help. He repeatedly yelled at the men to drop the gun, and when they did not, he attempted to take possession of the gun himself. As he did so, wrestling with the men on the ground, he continued to yell, "Police," and repeatedly shouted for someone to tell him "who's the good guy," "who's the bad guy." He clearly did not enter this situation with the intent to use deadly physical force. Indeed, the only reasonable conclusion is that it was his intent to prevent the use of such force. And he resorted to it only when he perceived that his own life was in danger.

So too, when Officer Arbia faced James McGoey, who was within arm's reach of a gun and who ignored the officer's order to show his hands, the officer confronted a situation that could reasonably have been perceived as threatening his life, as well as the lives of others. Both Arbia and Geraghty acted within the parameters of the justification defense when they responded to reasonably-perceived threats of deadly force against themselves or others, and the People would be unable to prove otherwise beyond a reasonable doubt. Criminal charges in this matter would be unwarranted and unsustainable.