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October 6, 2014

Colonel Nathaniel McQueen
Superintendent
Delaware State Police
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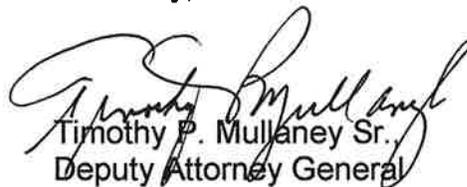
RE: Use of Deadly Force - Trooper 1st Class (TFC) Matthew Morgan

Dear Colonel McQueen:

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by TFC Matthew Morgan on September 30, 2014. As a result, TFC Morgan's use of deadly force was deemed justifiable and is not subject to criminal prosecution under Delaware law.

Thank you and your command for your cooperation and assistance in this matter. Please contact me if you have any questions.

Sincerely,


Timothy P. Mullaney Sr.
Deputy Attorney General

tpm
Enclosure

**REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE STATE POLICE USE OF DEADLY FORCE**

SUBJECT: MICHAEL W. ROGERS

OFFICER: TFC MATTHEW MORGAN

JULY 31, 2013

**By: Timothy P. Mullaney Sr.
Deputy Attorney General
September 30, 2014**



Scope of the Investigation

This is the final report of the Delaware Department of Justice on the investigation of Trooper First Class Matthew Morgan (TFC Morgan) of the Delaware State Police use of force against Michael W. Rogers (Rogers). Special Investigator Jean Rothenburger conducted the investigation. Deputy Attorney General Timothy P. Mullaney Sr. supervised the investigation and reviewed the use of force for the Department of Justice. Investigators examined the actual crime scene and also reviewed evidence, reports written by officers who responded to the scene and witness interviews.

Purpose of the Department of Justice Report

The Department of Justice's investigation of law enforcement officer shootings serves a specific but limited purpose. The Department determines whether a law enforcement officer's use of deadly force constitutes a criminal act. The Department does not establish or enforce internal police policies concerning the proper use of deadly force by law enforcement officers. Law Enforcement Agencies are responsible for establishing and enforcing guidelines for the use of force by their officers and for determining whether an officer's actions were consistent with such guidelines in a given case.

This report expresses no opinion whether the officer's actions complied with departmental policies or procedures concerning the use of force set by the Delaware State Police (DSP) or whether, with the benefit of hindsight, the officer could have proceeded differently. This a matter of a separate internal investigation to be undertaken by the Delaware State Police. The sole purpose of the Department of Justice's investigation of the use of deadly force is to determine whether the officer committed a crime when he used deadly force against Mr. Rogers. One of the issues that must be considered in any law enforcement officer involved shooting is whether the use of deadly force by a law enforcement officer was justified under all the circumstances.

The Facts

On August 1, 2013 at approximately 2110 hours, TFC Morgan was dispatched to the Riverside Inn located in Millsboro for a report of a hit and run motor vehicle accident. TFC Morgan was advised that the hit and run vehicle displayed Delaware Registration 183945. Additionally TFC Morgan was advised that the name of the individual driving the vehicle was Michael Rogers, which was derived from credit card receipts used by the subject at the Riverside Inn. The vehicle came back registered to Michael Rogers with a Georgetown address.

TFC Morgan went to the Georgetown residence and met with Lorraine Rogers, Michael Roger's mother, who advised that Michael was asleep in his bedroom. Mrs. Rogers had advised that Michael had just come home drunk and went to bed. TFC Morgan was invited into the residence and contacted Mr. Rogers in the living room. At

this point TFC Morgan smelled an odor of alcohol on Mr. Rogers' breath. Mr. Rogers went to his bedroom to retrieve his insurance card and TFC Morgan followed him. Once in the bedroom Mr. Rogers began talking incoherently and walking in circles. TFC Morgan advised Mr. Rogers to go outside to the patrol vehicle and continue the investigation. Mr. Rogers refused to do so. TFC Morgan placed his hand on Mr. Rogers' arm to escort him outside and Mr. Rogers pushed Morgan down onto the bed.

A violent struggle ensued and Mr. Rogers somehow ends up on top of TFC Morgan on the floor. Mr. Rogers had TFC Morgan in a headlock and was pushing TFC Morgan's head and neck up. TFC Morgan feared that Mr. Rogers was going to break his neck. TFC Morgan was able to free himself from Rogers' grip, removed his Taser, and told Mr. Rogers to stop. Mr. Rogers ignored the order and advanced towards TFC Morgan who then fired the Taser. Mr. Rogers was struck by the taser but he removed the probes from his body. TFC Morgan then retreated to the living room from the kitchen. At this point Mr. Rogers picked up a coffee table and rushed towards TFC Morgan with it. TFC Morgan feared for his life and drew his firearm and fired. Mr. Rogers was hit and fell to the ground. Mr. Rogers was transported by ambulance to Beebe Hospital where he was admitted. TFC Morgan was also treated and released at Beebe Hospital.

Conclusion

After a thorough investigation and review of all statements and reports, it is the conclusion of the Department of Justice that, as a matter of Delaware Law, Delaware State Police Trooper First Class Matthew Morgan's use of deadly force was not a criminal act because the use of such force was justified. Section 464 of Title 11 of the Delaware Code generally defines the legal use of force in self protection. It provides, in pertinent part, that "[t]he use of force upon or toward another person is justifiable when the [officer] believes that such force is immediately necessary for the purpose of protecting the [officer] against the use of unlawful force by the other person on the present occasion".

Under Delaware Law, it is TFC Morgan's subjective state of mind which is of critical importance in determining whether his use of force was justifiable. The specific factual issue is whether TFC Morgan actually believed at the time he intentionally fired his weapon that such action was necessary to protect himself from death or serious physical injury, so long as he was not reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the use of force.

Prior to firing his weapon, TFC Morgan had been involved in a violent confrontation with Mr. Rogers who had TFC Morgan in a headlock and was trying to either suffocate TFC Morgan or break his neck. TFC Morgan was able to escape from Mr. Rogers and retreated to kitchen area. Mr. Rogers followed and TFC Morgan advised him to stop. Mr. Rogers continued to advance on TFC Morgan, who then

Tasered him, which had little or no effect. Mr. Rogers pulled out the Taser probes. Mr. Rogers rushed TFC Morgan with a small table in front of him at which time TFC Morgan feared for his life and discharged his firearm striking Mr. Rogers. The investigation of the facts and circumstances fully support the reasonableness that TFC Morgan felt his life was in danger. That belief was not formed recklessly or negligently. As a result, TFC Morgan's use of deadly force was justified and is not subject to criminal prosecution.