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DEPARTMENT OF JUSTICE
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June 13, 2013

Colonel Elmer Setting
New Castle County Police Department
3601 North DuPont Highway
New Castle, DE 19720

RE: AG Case # 17-12-01-0212, Police Use of Deadly Force Investigation
Officer Mary Malin
Date of Incident – August 9, 2012

Dear Colonel Setting,

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Officer Mary Malin on August 9, 2012. As a result, the officer'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 concerns or questions.

Sincerely,


Timothy P. Mullaney Sr.
Deputy Attorney General

TPM/mam
Enclosure

REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

NEW CASTLE COUNTY POLICE USE OF DEADLY FORCE

SUBJECT: James L. Green

OFFICER: Mary Malin

August 9, 2012

By: Timothy Mullaney, Sr. 
Deputy Attorney General

Date: June 10, 2013

SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against James L. Green by Officer Mary Malin of the New Castle County Police Department on August 9, 2012. Special Investigator Jack Desmond conducted the investigation. Deputy Attorney General Timothy Mullaney, Sr. supervised the investigation and review of the use of force for the Department of Justice. Statements were taken from police officers at the scene. They also reviewed physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, and medical records.

PURPOSE OF THE ATTORNEY GENERAL'S INVESTIGATION

The Department of Justice's (DOJ) investigation of police shootings serves a specific but limited purpose. The DOJ determines whether a police officer's use of deadly force constitutes a criminal act. The DOJ does not establish or enforce internal police policies concerning the proper use of deadly force by police officers. Police departments 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 officers' actions complied with the departmental policies or procedures concerning the use of force set by the New Castle County Police Department (NCCPD) or whether, with the benefit of hindsight, the officers could have proceeded differently. This is a matter of a separate internal investigation being undertaken by the NCCPD. The only purpose of the DOJ's investigation of this shooting is to determine whether the officers committed a crime when they used deadly force against James L. Green. One of the issues that must be considered in any intentional shooting is whether the use of deadly force was justified under all of the circumstances.

FACTS OF THE INVESTIGATION

On August 9, 2012 at approximately 1625 hours several New Castle County Police Officers were dispatched to 237 Parma Avenue on a report of shots fired. The incident was the result of several fights that took place on Parma Avenue during the course of the day involving two neighborhood women and their boyfriends. During one of the altercations, one of the boyfriends, James L. Green, displayed a handgun and fired one round near the feet of the other boyfriend. Several neighbors witnessed the incident and called the Police. Green left the scene in his light blue Cadillac. Witnesses notified RECOM that the suspect, who discharged the handgun, left the area and was heading towards Memorial Drive in a light blue Cadillac.

At approximately 1629 hours, Officer Mary Malin observed a vehicle matching the description broadcast stopped at Parma Avenue at Memorial Drive. The operator of the suspect vehicle looked at Officer Malin and leaned his body backwards, which appeared suspicious to Officer Malin. After a few seconds, the suspect vehicle turned onto Memorial Drive heading westbound. At this point, Officer Malin turned on her overhead lights and the suspect vehicle pulled over to the side of the road. According to Officer Malin, the suspect started fiddling around a little bit, by turning his head down to the right. Officer Malin described it as his body was actually turned towards the right between the driver's seat and the passenger's seat. It was at this point that Officer Malin felt like he had a gun on him and was reaching for it. Officer Malin exited her vehicle because she felt confined in her vehicle and didn't want to be trapped in case something happened. Officer Malin approached the suspect vehicle with her weapon drawn and ordered the driver, later identified as James L. Green, to show his hands. Green showed his hands initially but several times reached down with his right hand to the center area of the front seat. Officer Malin continued to order him to show his hands out the window but the suspect continued to move his right hand inside towards the center of the vehicle. Based on the information received, Officer Malin felt that suspect was reaching for a weapon. Officer Malin was within one foot of the suspect vehicle by the pillar that separates the front and back driver's side windows, when the suspect turned the car wheels to the left and began accelerating. As the car was pulling away, Officer Malin felt the suspect vehicle was going to hit her. Since Officer Malin no longer could see suspect's hands, she felt the suspect was going to shoot her as he drove by. At this point, Officer Malin discharged her weapon two times. The first shot appears to have struck the suspect vehicle in the pillar between the front and rear windows on the driver's side and the second shot struck Green in the back of his head. The suspect vehicle travelled across the eastbound and westbound lanes of Memorial Drive and crashed into a parked car. A handgun wrapped in a shirt was found between the seats of the suspect vehicle.

CONCLUSION

After a thorough investigation and review of all the statements, reports and other evidence described above, it is the conclusion of the DOJ that, as a matter of Delaware Law, Officer Malin's use of deadly force was justified in this case. 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 Officer Malin's subjective state of mind which is of critical importance in determining whether her use of force was justifiable. The specific factual issue is whether Officer Malin actually believed at the time that she intentionally fired her weapon that such action was necessary to protect herself from death or serious physical injury, so long as Officer Malin 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.

At the time that Officer Malin fired her weapon, she believed that James Green was armed and posed a threat of death or serious physical injury to her. Officer Malin relied on the broadcast that a black male subject leaving the scene had discharged a weapon in the direction of another person and then fled in a light blue Cadillac. Officer Malin was of the belief that the black male subject she observed at the intersection of Parma and Memorial Drive in a light blue Cadillac was the same individual in the broadcast. Officer Malin believed that when the James Green ignored her verbal orders to show his hands and refused to show his right hand that he was reaching for a weapon. As James Green put the vehicle in gear and started to pull away, Officer Malin feared that James Green was going to run her over and then shoot her. The investigation of the facts and circumstances support the reasonableness of Officer Malin's belief that James Green was armed and that it was not formed recklessly or negligently. As a result, Officer Malin's use of deadly force was justified and not subject to criminal prosecution under Delaware law.