



JOSEPH R. BIDEN, III  
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE  
NEW CASTLE COUNTY  
820 NORTH FRENCH STREET  
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400  
FAX (302) 577-6630  
CRIMINAL DIVISION (302) 577-8500  
FAX (302) 577-2496  
FRAUD DIVISION (302) 577-8600  
FAX (302) 577-6499  
TTY (302) 577-5783

June 11, 2013

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

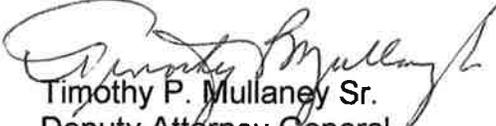
RE: AG Case # 17-12-01-0131, Police Use of Deadly Force Investigation  
Officers - Kevon V. Cumberbatch and Ernest Melvin  
Date of Incident – May 10, 2012

Dear Colonel Setting,

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Officers Kevon V. Cumberbatch and Ernest Melvin on May 10, 2012. As a result, the officers' 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: Eric Turnbull

OFFICERS: Kevon V. Cumberbatch and Ernest Melvin

May 10, 2012

By: Timothy Mullaney, Sr.   
Deputy Attorney General

Date: June 6, 2013

## **SCOPE OF THE INVESTIGATION**

This is the final report of the Delaware Department of Justice on the use of deadly force against Eric Turnbull by Detective Kevon V. Cumberbatch and Detective Ernest Melvin of the New Castle County Police Department on May 10, 2012. Special Investigator Anthony R. Davolos 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 Eric Turnbull. 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 May 10, 2012, at approximately 1400 hours, the Drug Control Squad and the Mobile Enforcement Team (the Unit) was conducting a drug investigation involving the delivery of drugs at the Harbor Club Apartments. According to a confidential informant (CI), the drugs (2 ounces of Marijuana and the possibility of some cocaine) were to be delivered by some dumpsters in the area of Building 11-13 at the Harbor Club Apartments by Eric Turnbull (Turnbull). Turnbull was to arrive in either a black Ford Crown Victoria, a tan GMC Envoy, or a Chevrolet Equinox. The CI would meet with Turnbull in their vehicles, driver side to driver side at which time the drug exchange would occur. According to the CI, this is how deals had transpired in the past with Turnbull.

The Unit had set up surveillance on Turnbull's residence and followed him to the meet location. Officers were advised that Turnbull was currently wanted out of Florida on a felony warrant with extradition authorized. Officers were also advised that Turnbull had recently been arrested for Delivery of a Controlled Substance by the Delaware State Police on March 1, 2012. Officers were dressed in their tactical uniforms with the exception of one Detective, who was in civilian dress. Officers were deployed to their vehicles and their respective assignments. Once all units were in position, a telephone call was placed to Turnbull by the Confidential Informant. As a result of the phone conversation, all units were advised that Turnbull would be on his way to make the drug delivery.

Shortly thereafter, a green GMC Envoy turned onto Cheswold Boulevard. The Confidential Informant positively identified the vehicle as the one belonging to Turnbull. Turnbull was positively identified as the operator of the vehicle. As Turnbull was approaching the Confidential Informant, the order was given to take Turnbull into custody. Officers pulled behind Turnbull's vehicle blocking escape and another vehicle pulled directly in front of Turnbull with the left front bumper touching Turnbull's right front bumper. Officers exited the vehicle blocking the front of Turnbull's vehicle and proceeded to surround his vehicle to take him into custody. Officers were wearing raid vests clearly marked "POLICE" and as they approached Turnbull's vehicle yelled "police get out of the car." Suddenly, Turnbull without looking back placed his vehicle in reverse and accelerated quickly, spinning his wheels and striking the unmarked undercover car behind him in the driver's side behind the door. Detective Cumberbatch, who had been driving the undercover vehicle behind Turnbull's vehicle had already exited but had to run to get out of the way. He then runs to the passenger side open window of Turnbull's vehicle. Detective Cumberbatch yelled to Turnbull "police let me see your hands." At this point Detective Cumberbatch based on the movement of Turnbull's hands in the vehicle felt that he might be armed. Detective Cumberbatch continued verbal commands directed at Turnbull and observed him putting his hand on shifter and told him "not to do it". Turnbull then placed the vehicle in drive and started forward with wheels spinning. As this occurred, Detective Cumberbatch sees at least two officers in front of vehicle, one of whom was Detective Ernest Melvin, and fearing for their safety fired one shot striking Turnbull in the right arm and chest. Detective Melvin fearing for his life and that of his fellow officer fired one round at Turnbull, which missed Turnbull and lodged in the right front top of the hood of Turnbull's vehicle. Turnbull's vehicle struck the undercover vehicle blocking him and he fled.

Turnbull's vehicle continued west bound onto Cheswold Boulevard. Due to shots being fired, a NCCO police supervisor on scene ordered that Turnbull not be pursued. Officers on the scene with the exception of Detective Cumberbatch were not aware that Turnbull had been shot. Turnbull continued onto Melodie Drive, where he lost control of his vehicle, driving into some shrubs and a fence and came to rest in a shed at the rear of 14 Lutes Court. This was approximately .10 miles from the original scene.

Officers at the original scene were notified by a civilian that a car had crashed down the street. Officers responded and found Turnbull's vehicle in the shed. Forced entry was made into the vehicle and Turnbull was not responsive but breathing. First aid was rendered until the arrival of NCCO Paramedics and the personnel from Christiana Fire Company.

## CONCLUSIONS

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, Detective Ernest Melvin and Kevon Cumberbatch's use of deadly force was justified in this case.

Section 465 of Title 11 of the Delaware Code generally defines the legal use of force for the protection of other persons. It provides in part, that the use of force upon another person is justifiable in order to protect a third person when: 1) the individual using the force would have been justified in using such force to protect himself against injury which he believes is being threatened to the person he seeks to protect and, 2) under the circumstance as the individual using the force believes them to be, the person who the individual seeks to protect would have been justified in using such protective force; and, 3) the person using the force believes that intervention is necessary for the protection of the other person. Additionally, the use of deadly force is justifiable if the individual using such force believes that it is necessary to protect a third person or persons from the threat of death or serious physical injury. 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." Therefore, under Delaware Law, it is Detective Melvin and Cumberbatch's subjective state of mind which is of critical importance in determining whether their use of deadly force was justifiable in this case. The specific factual issue is whether Detective Melvin and Cumberbatch actually believed at the time that they intentionally fired their weapon that such action was necessary to protect his fellow officers and in Detective Melvin's case, himself, from death or serious physical injury provided Detective Melvin and/or Cumberbatch were not reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of the use of force.

At the time Detective Melvin and Cumberbatch fired their weapon, Eric Turnbull had already struck one vehicle without regard for anyone's safety and was attempting to drive forward towards Detective Melvin and one other officer in a reckless and dangerous manner and was told repeatedly by officers "police", "show your hands" and "don't do it". Detective Melvin and Cumberbatch believed that the use of deadly force was immediately necessary to prevent serious injury or death to those described above

due to the reckless driving and behavior of Turnbull. Additionally, Detective Melvin believed that the use of force was immediately necessary for the purpose of protecting himself due to the reckless driving and behavior of Turnbull. The investigation of the facts and circumstances fully support the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Detective Melvin and Cumberbatch's use of deadly force was justified and is not subject to criminal prosecution under Delaware law.