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June 11, 2013

Chief Christine R. Dunning  
Wilmington Police Department  
McLaughlin Public Safety Building  
300 North Walnut Street  
Wilmington, DE 19801

RE: AG Case # 17-12-01-0140, Police Use of Deadly Force Investigation  
Officer John Potts  
Date of Incident – May 18, 2012

Dear Chief Dunning,

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Officer Potts on May 18, 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. A copy of my report is attached. Please contact me if you have any concerns or questions.

Sincerely,

  
Timothy P. Mullaney Sr.  
Deputy Attorney General

Enclosure  
file

REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

WILMINGTON POLICE USE OF DEADLY FORCE

SUBJECT: Kevon Harris-Dickerson

OFFICER: John Potts

May 18, 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 Kevin Harris-Dickerson by Patrolman John Potts of the Wilmington Police Department on May 18, 2012. Special Investigator Allen Ruth 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 Wilmington Police Department (WPD) 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 WPD. 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 Kevin Harris Dickerson. 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 18, 2012 at approximately 0800 hours Patrolman (Ptlm) Potts, who was on duty in full uniform and operating a marked Wilmington Police Vehicle, was dispatched to North Van Buren Street for a theft complaint. Upon arrival, Ptlm Potts was told about a suspicious vehicle in the rear of North Van Buren Street in a parking lot of the Apostolic Christian Tabernacle Church and that a subject had stolen a gasoline container from a residence on North Van Buren Street. Ptlm Potts observed a maroon Jeep parked in the rear parking lot of the Church located at 2900 North Van Buren Street, which was occupied by two unknown black male subjects.

As Ptlm Potts approached the Jeep, the operator put the vehicle in reverse and backed away from him at an accelerated rate. Ptlm Potts ran towards the vehicle yelling commands for the vehicle to stop and for the occupants to exit the vehicle. The vehicle stopped for a few seconds then the vehicle accelerated towards Ptlm Potts. Ptlm Potts thought that he was going to be hit by the vehicle and started to discharge his weapon at the operator of the vehicle. Ptlm Potts continued to fire as he moved laterally to his right to avoid being struck by the vehicle.

After the vehicle passed, Ptlm Potts started to pursue the vehicle on foot and notified WPD communication of what had taken place. The vehicle exited the parking lot of the Church and went southbound on North Van Buren, then east on East 29th Street. The vehicle was abandoned in the 300 block of West 25th Street. Driver of the vehicle was later identified as Kevin Harris-Dickerson. A short time later, officers located Kevin Harris-Dickerson in the 2500 block of North Washington Street with gunshot wounds to both legs. It was later found that the Jeep operated by Harris-Dickerson was a 1994 Jeep Cherokee displaying Delaware registration PC191270 which had been stolen from the 2500 block of North Jefferson Street.

### **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, Patrolman John Potts' 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 Ptlm Potts' subjective state of mind which is of critical importance in determining whether their use of force was justifiable. The specific factual issue is whether Ptlm Potts actually believed at the time that he intentionally fired his weapon that such action was necessary to protect himself from death or serious physical injury, so long as Ptlm Potts 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 Ptlm Potts fired his weapon, Mr. Harris-Dickerson, who had ignored numerous commands to stop and exit his vehicle, continued to drive his vehicle in a reckless and deliberate manner directly at Ptlm Potts. The officer believed he was in immediate danger and that the use of deadly force was immediately necessary to prevent serious injury or death to himself. 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, Ptlm Potts' use of deadly force was justified and is not subject to criminal prosecution under Delaware Law.