

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

**SUBJECT: Michael L. McKillop
OFFICER: Corporal/3 Scott Mauchin**

DATE OF INCIDENT: March 8, 2015

**By: Allison E. Reardon
Director
Office of Civil Rights and Public Trust
September 1, 2015**

Scope of the Investigation

This is the final report of the Delaware Department of Justice, Office of Civil Rights and Public Trust, on the investigation of the use of force by Corporal/3 Scott Mauchin (Cpl/3 Mauchin) of the Delaware State Police (DSP) against Michael L. McKillop (Mr. McKillop). Special Investigator Brittney S. Ketler conducted the investigation.¹ Chief Investigator Franklin Robinson supervised the investigation. Deputy Attorney General Allison E. Reardon reviewed the use of force for the Department of Justice. Investigators examined the 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 or whether, with the benefit of hindsight, the officer could have proceeded differently. That is a matter of a separate internal investigation to be undertaken by the Delaware State Police. The sole purpose of this Department of Justice investigation is to determine whether the involved officer committed a crime when he used deadly force against Mr. McKillop. One of the issues that must be considered in any law enforcement officer-involved shooting is whether the use of deadly force by the officer was justified under all the circumstances.

The Facts

On Sunday, March 8, 2015, Cpl/3 Mauchin was assigned to Troop 1 in the Uniform Patrol Unit and was working the 6:00 p.m. to 6:00 a.m. shift. At approximately 1:35 a.m. Cpl/3 Mauchin answered a dispatch from RECOM involving an alarm at the Rite Aid within the Northtowne Plaza Shopping Center in Claymont, Delaware. Cpl/3 Mauchin arrived at the Rite Aid at approximately 1:46 a.m. Cpl/3 Mauchin was in full DSP uniform and operating a fully marked DSP Chevy Tahoe. He pulled up to the front of the building and exited his vehicle. The front of the building had a roll down gate that was secured. Cpl/3 Mauchin looked in the window and did not see anyone inside the building. He thought the alarm might have been activated by the vibration from a street sweeper that had passed the front of the building.

¹ Lead Special Investigator Robert Irwin received the initial call about the shooting and responded to the scene. The case was subsequently assigned to Investigator Ketler and the Office of Civil Rights and Public Trust.

After checking the front of the building, Cpl/3 Mauchin got back into his vehicle and drove around to the back of the Rite Aid. As he arrived at the rear of the store, Cpl/3 Mauchin observed a maroon colored Oldsmobile parked facing the wall of the building with its engine running, windshield wipers on and trunk slightly ajar. He believed he had discovered a burglary in progress.

He parked his patrol vehicle at an angle behind the right rear quarter panel of the Oldsmobile and contacted RECOM. Cpl/3 Mauchin had just finished providing the description of the vehicle to RECOM when he observed a white male [Mr. McKillop] coming out from around a dumpster located near the rear entrance of the Rite Aid and that obscured the view of the doors. Mr. McKillop was holding an armful of cartons of cigarettes.

Cpl/3 Mauchin exited his patrol vehicle, drew his department-issued weapon with his right hand, pointed it at Mr. McKillop and commanded him to "get down." McKillop did not respond to Cpl/3 Mauchin's commands and got into the Oldsmobile. Cpl/3 Mauchin ran up to the open door of the vehicle and grabbed the front of Mr. McKillop's shirt with his left hand in an effort to pull him from the car as he continued to command Mr. McKillop to "get out of the car." During the struggle, Cpl/3 Mauchin became wedged between the interior side of Mr. McKillop's driver's side door and the driver's seat. Mr. McKillop, who was seated in the driver's seat of the vehicle, placed the car in drive and accelerated forward, striking an electrical conduit connected to the side of a neighboring store. As Cpl/3 Mauchin continued struggling to pull Mr. McKillop from the moving car, Cpl/3 Mauchin's right hand was behind the driver's head and his weapon accidentally discharged. The bullet traveled through the driver's side head rest and into the right rear door without striking either Mr. McKillop or Cpl/3 Mauchin. Cpl/3 Mauchin then holstered his gun.

While Cpl/3 Mauchin was still positioned between the interior side of the driver's door and the driver's seat, Mr. McKillop placed the vehicle in reverse and accelerated backwards. To avoid being dragged by the vehicle, Cpl/3 Mauchin jumped inside the moving car and landed in a kneeling position with his knees on Mr. McKillop's legs. The vehicle travelled in reverse about 50 feet striking a pallet of pavers near the rear of the neighboring Home Depot. Mr. McKillop then put the car in drive and accelerated forward striking Cpl/3 Mauchin's vehicle. He quickly backed up again, almost hitting the paver bricks, and then accelerated forward, striking Cpl/3 Mauchin's vehicle a second time.

As the car drove forward and backward, Cpl/3 Mauchin struggled with Mr. McKillop inside the vehicle, holding on to whatever he could grab to stay inside the vehicle. He was unable to reach or properly utilize his Taser or any other weapon on his duty belt. Instead, he attempted to subdue Mr. McKillop by striking him in the face with his fists. Cpl/3 Mauchin reported that Mr. McKillop seemed unfazed. Cpl/3 Mauchin reported that the look on Mr. McKillop's face led him to believe that Mr. McKillop viewed him as an obstacle in Mr. McKillop's path and not as a person or a police officer.

Cpl/3 Mauchin eventually fell out of the vehicle. After quickly getting to his feet, he heard Mr. McKillop's car engine revving and the wheels spinning. Mr. McKillop's vehicle could

not move forward. Cpl/3 Mauchin reported that he had nowhere to go, and Mr. McKillop had nowhere to go other than to put the vehicle in reverse. Cpl/3 Mauchin reported that he knew he had to stop the suspect and he felt exposed because he was behind the right rear corner of Mr. McKillop's car. Based on Mr. McKillop's erratic behavior and the fact that Mr. McKillop had just smashed into multiple objects, Cpl/3 Mauchin believed that Mr. McKillop was going to put the car in reverse and attempt to run him over. In fear for his life and nearing the point of exhaustion from attempting to subdue Mr. McKillop, Cpl/3 Mauchin fired his department-issued weapon toward the driver's seat, aiming for the biggest target and best chance of stopping Mr. McKillop. Cpl/3 Mauchin fired two rounds. One round struck the driver's seat and continued into Mr. McKillop's right lower back. He heard the suspect say he had been hit and then heard the spinning of the wheels on the car die down.

Cpl/3 Mauchin radioed for an ambulance and advised RECOM that shots were fired and a subject was down. Cpl/3 Mauchin immediately returned to Mr. McKillop's vehicle and proceeded to render aid. Cpl/3 Mauchin applied pressure to the wound and talked to Mr. McKillop to calm him and keep him conscious, telling him to "hang in there" and letting him know that an ambulance was on its way. Shortly thereafter, Corporal/1 Megan Hazzard (Cpl/1 Hazzard) arrived and assisted Cpl/3 Mauchin with providing aid to Mr. McKillop. The position of the vehicle made it difficult to work on Mr. McKillop so Cpl/3 Mauchin and Cpl/1 Hazzard moved Mr. McKillop out of the driver's seat to the front of the vehicle so they and medical personnel could reach him. Mr. McKillop was able to get up on his own and to walk with assistance when they moved him but his breathing was labored. After emergency personnel arrived, Mr. McKillop was airlifted to Christiana Hospital, where he died from his injuries at approximately 4:58 a.m.

Cpl/3 Mauchin was initially transported by Corporal/2 Chris Sutton (Cpl/2 Sutton) to Troop 1. After Cpl/2 Sutton pointed out a tear in Cpl/3 Mauchin's pants, Cpl/3 Mauchin realized he had a laceration to his left knee and other injuries. He was transported to the Wilmington Hospital, where he was treated for a puncture wound to his left knee that required 3 stitches, scrapes, cuts, and contusions to his legs, swelling to his right hand, bruising to his upper right shoulder, and bruising under his right eye.

The Medical Examiner later determined that Mr. McKillop died from a single gunshot wound that entered his back and caused associated internal injuries. Mr. McKillop's toxicology report was positive for benzodiazepine cocaine, methadone and fentanyl. Drug paraphernalia was found in Mr. McKillop's sweatshirt pockets.

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, the use of force by Cpl/3 Scott Mauchin 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."

Additionally, Section 465 of Title 11 of the Delaware Code defines the use of force for the protection of other persons. It provides that, “[t]he use of force upon or toward another person is justifiable to protect a third person when the [officer] would have been justified under § 464 of this title in using force to protect the [officer] against the injury the [officer] believes to be threatened to the person whom the [officer] seeks to protect.”

Under Delaware law, it is Cpl/3 Mauchin’s subjective state of mind that is of critical importance in determining whether his use of force was justifiable. The specific factual issue is whether Cpl/3 Mauchin actually believed at the time that he intentionally fired his weapon that such action was necessary to protect himself or others from death or serious physical injury, so long as the officer 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.

Cpl/3 Mauchin responded to the scene of an alarm that turned out to be a burglary in progress. Mr. McKillop ignored Cpl/3 Mauchin’s commands to stop and to get out of his vehicle. Instead, Mr. McKillop attempted to escape with Cpl/3 Mauchin pinned between the driver’s side door and seat, exposing Cpl/3 Mauchin to the risk of serious injury or death. Mr. McKillop accelerated his vehicle forward and backward multiple times, attempting to find a path away from the scene, first, with Cpl/3 Mauchin pinned outside of the vehicle and then hanging on inside of the vehicle with the door still open. After Cpl/3 Mauchin fell out of the vehicle, ending up behind the vehicle, Mr. McKillop continued to rev the engine and spin his wheels. Cpl/3 Mauchin stated that he was in fear for his life, that he believed Mr. McKillop was going to try to run him over and that he had no escape route. At that point, Cpl/3 Mauchin drew his weapon and fired at Mr. McKillop.

The investigation of the facts and circumstances fully support the reasonableness of Cpl/3 Mauchin’s belief that his life was in danger. That belief was not formed recklessly or negligently. As a result, the use of deadly force by Cpl/3 Mauchin was justified and is not subject to criminal prosecution.