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December 18, 2008

Colonel Thomas F. MacLeish
Delaware State Police
P. O. Box 430
Dover, DE 19903

RE: Sergeant Darren Short
Use of Deadly Force – September 26, 2008

Dear Colonel MacLeish:

The Department of Justice has completed its investigation and review of the use of deadly force by Sergeant Darren Short on September 26, 2008. As a result, the Sergeant'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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy Mullaney, Sr.", written over a printed name and title.
Timothy Mullaney, Sr.
Deputy Attorney General

TM/mam
Enclosure

REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE STATE POLICE DEPARTMENTAL SHOOTING

September 26, 2008

JOSEPH R. BIDEN
ATTORNEY GENERAL

By: TIMOTHY MULLANEY, SR.
Director of Fraud Division 

Dated: December 18, 2008

THE SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against Kenneth Miller by Delaware State Police Sergeant Darren Short on September 26, 2008. Special Investigator Anthony Davolos conducted the investigation for the Department of Justice. Deputy Attorney General Timothy Mullaney supervised the investigation and review of the use of force for the Department of Justice. They reviewed statements taken from Sergeant Short along with statements taken by other officer at the scene. They also reviewed physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, photographs, videos and medical reports.

PURPOSE OF THE ATTORNEY GENERAL'S INVESTIGATION

The Department of Justice's investigation of police shootings serves a specific but limited purpose. The Attorney General determines whether a police officer's use of deadly force constitutes a criminal act. The Attorney General 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 officer's actions complied with any 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. This is a matter of a separate internal investigation being undertaken by The Delaware State Police. The only purpose of the Department's investigation of this shooting is to determine whether the officer committed a crime when he used deadly force against Kenneth Miller. One of the issues that must be considered in any intentional shooting is whether the use of deadly force was justified under all the circumstances.

FACTS OF THE INVESTIGATION

On September 25, 2008, at approximately 2111 hours, Seaford 911 Center received a call from Helen Miller, mother of Kenneth Miller requesting an ambulance for her son. Mrs. Miller described her son Kenneth as "taking pills, drinking alcohol and suicidal." She advised the call taker that he was walking to his residence on Wesley Church Rd and that he had a gun in the house. Seaford 911 then notified the Delaware State Police (DSP) at Suscom and patrol units were dispatched immediately.

Upon arrival of responding officers, Kenneth Miller was observed outside of his residence armed with a rifle. A perimeter was established and telephonic contact with Miller was made. Miller alluded to suicide and violence against the officers during phone conversations. At approximately 2230 hours, Delaware State Police Special Operations Response Team (SORT) and Conflict Management Team (CMT) were activated.

At approximately 2300 hours, SORT Team members started to arrive and take up positions. Sergeant Darren Short a SORT Team sniper, was one of the first to arrive. He was already aware of an armed suicidal subject via radio dispatch and was now informed that Miller had stabbed himself one year ago in a suicide attempt. Sergeant Short took up position using a State Police cruiser as cover, approximately fifty-three yards from the Miller residence.

At approximately 2345 hours, Sergeant Short observed Miller exit the side door with a shotgun and quickly walk towards DSP officers on the property. Miller was yelling "shoot me, shoot me!" Sergeant Short repositioned himself with a Bridgeville Officer to take cover and briefly lost sight of Miller. At this time, Miller confronted officers on his property, yelling "kill me," and pointing the gun in their direction.

At approximately 2400 hours, members of the DSP CMT arrived on the scene. and made the initial contact with Miller by telephone. The Trooper was able to establish a rapport with Miller that lasted most of the night. The Trooper described Miller in the After Action Report as being irate, having slurred speech and being heartbroken over the death of his father and loss of his fiancé. It was also noted that Miller appeared to be "taunting" and trying to get police to shoot him so he could be with his deceased father. Over the next several hours, Miller exited his residence sometimes armed, taunting and threatening officers. At one time, Miller attempted to damage a SORT robot deployed on his property.

Shortly after 0500 hours, telephonic negotiations broke down with Miller and Conflict Management officers lost contact. A decision was made to deliver a loudspeaker to the driveway to resume some contact and dialog with Miller. At this same time, the robot lost battery power and was inoperable. A loudspeaker was delivered to the driveway from an armored SORT vehicle by several SORT members. Sergeant Short was covering this action with a sniper rifle to insure the delivery team was safe. As the delivery team positions the loudspeaker close to the Miller residence, Miller exited the north side door armed with a shotgun. Miller then shouldered the shotgun and aimed it at the SORT officers that had delivered the loudspeakers and were walking back to their armored vehicle. This was the first time that Sgt. Short observed Mr. Miller shoulder and aim the weapon in an aggressive posture. Sergeant Short, then fearing serious physical injury or death to the retreating SORT officers, fired one round at Miller mortally wounding him.

CONCLUSION

Title 11, sections 465 of the Delaware Code generally defines the use of force for the protection of others. It provides that the use of force upon or toward the person of another is justifiable to protect a third person when the force would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant believes to be threatened to the person whom the defendant seeks to protect; and, under the circumstances as the defendant believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force

After a thorough investigation and review of all the statements, reports and other evidence described above, it is the conclusion of The Department of Justice that, as a matter of Delaware Law, Sergeant Short's use of deadly force was justified in this case. At the time Sergeant Short fired his rifle, he believed deadly force was immediately necessary to prevent serious injury or death to the SORT officers who had delivered a loudspeaker and were vulnerable as they retreated. The investigation of the facts and circumstances of the shooting fully support the reasonableness of those beliefs, and that it was not formed recklessly or negligently. As a result, Sergeant Short's use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware Law.