



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

JOSEPH R. BIDEN, III
ATTORNEY GENERAL

January 29, 2010

Colonel Robert M. Coupe
Superintendent
Delaware State Police
P. O. Box 430
Dover, DE 19903

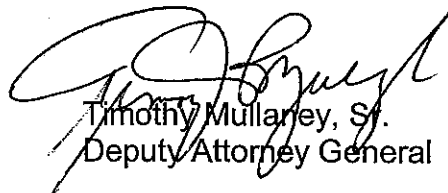
RE: Use of Deadly Force – Captain Charles Simpson

Dear Colonel Coupe:

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Captain Simpson on August 2, 2009. As a result, Captain Simpson'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.

Sincerely,



Timothy Mullaney, Sr.
Deputy Attorney General

TPM/mam
Enclosure

**REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE STATE POLICE USE OF DEADLY FORCE
AUGUST 2, 2009**

**By: Timothy P. Mullaney Sr.
Deputy Attorney General**

Date: December 15, 2009

Scope of the Investigation

This is the final report of the Delaware Department of Justice on the investigation of Captain Charles Simpson of the Delaware State Police use of deadly force against David C. Bethard Jr. Special Investigator Thomas Penozza, Director of the Special Investigations Unit, conducted the investigation. Deputy Attorney General Timothy P. Mullaney Sr. supervised the investigation and review of the use of force for the Department of Justice. Statements were taken from both police officers and civilian witnesses who were at the scene. Investigators examined the actual crime scene and also reviewed evidence, reports written by officers who responded to the scene, and witness interviews. An interview with Mr. Bethard was also conducted one on one with Special Investigator Penozza.

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 the departmental policies or procedures concerning the use of force set by the Delaware State Police (DSP) or whether, with the benefit of hindsight, the officer could have proceeded differently. This is a matter of a separate internal investigation to be undertaken by the Delaware State Police. The only purpose of the Department of Justice's investigation of this shooting is to determine whether the officer committed a crime when he used deadly force against Mr. Bethard. One of the issues that must be considered in any intentional shooting is whether the use of deadly force by a law enforcement officer was justified under all of the circumstances.

The Facts

On 8/2/09 at 1521 hours, DSP Troop 4 received a report of a domestic dispute with weapon involved and kidnapping that had occurred in Sand Hill Acres, Georgetown, DE. The victim in this incident was Cherry Esslinger. The suspect, David Bethard, had spent the previous night with his wife, Cherry Esslinger, at her daughter's residence in Sand Hill Acres, Georgetown, DE. Esslinger and Bethard have been separated for two years, but still see each other. About 1300 hours a domestic argument started between Bethard and Esslinger. No one was home at that time except Esslinger and Bethard. Esslinger's daughter and daughter's boyfriend were out and returned at about 1334 hours to find Bethard and Esslinger involved in a domestic dispute. Throughout the domestic dispute Bethard had armed himself with several

kitchen knives. Bethard's stated he knew the police were responding to the residence, and he repeatedly stated that "I am going to die today" and "everybody might die here today". Bethard eventually fled from the residence with Esslinger in a red Ford Escort.

Capt. Simpson, Troop Commander at Troop 4, was notified of the reported kidnapping by phone and text page on his cell phone. He was advised that the incident was a bad domestic with knives involved. At 1538 hours a broadcast went out over the police radio that the suspect and victim were in a red Ford Escort, Bethard was armed with knives and that Esslinger had been taken against her will. The red Escort was reported seen in the Lewes area. Capt. Simpson, in plain clothes, got into his police vehicle, a blue Dodge Durango, and responded to the last reported sighting. Capt. Simpson received a call that the suspect and victim were struggling in the street on SR 24 and Retz Lane. Capt. Simpson responded to that location and exited his vehicle at 1619 hrs. Bethard was holding Esslinger against the side of a van parked at 34429 Retz Lane. Capt. Simpson announced that he was with the State Police and Esslinger ran to Capt. Simpson stating that Bethard was going to kill her. Capt. Simpson told Esslinger to run away into a field near their location. He then drew his service weapon and told Bethard to show his hands and get on the ground. This occurred in the yard at 34429 Retz Lane. Bethard had his left hand in his pocket. Bethard ignored Capt. Simpson's commands and advanced towards him stating "I got something for you" several times. They continued to move around the yard with Capt. Simpson trying to maintain his distance, of 10 to 15 feet, from Bethard. Bethard ignored Capt. Simpson's repeated commands to show his hands and get on the ground. Bethard started to move away from Capt. Simpson and suddenly spun around, pulled a dark object from his pocket, and lunged at Capt. Simpson. At that time Capt. Simpson fired one round from his service weapon striking Bethard in the stomach area. After Bethard fell to the ground Capt. Simpson was able to see that Bethard had pulled a cell phone from his pocket.

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, Captain Charles Simpson's use of deadly force was not a criminal act because the use of such 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 Captain Simpson's subjective state of mind which is of critical importance in determining whether his use of force was justifiable in this case. The specific factual issue is whether Captain Simpson 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 Captain Simpson 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 Captain Simpson fired his weapon, Mr. Bethard, who had ignored numerous commands to remove his hand from his pocket and lay on the ground, continued to keep his hand in his pocket and get on the ground, lunged towards the officer with what appeared to a weapon. Captain Simpson believed he was in immediate danger and that the use of deadly force was immediately necessary to prevent serious injury or death to him. 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, Captain Simpson's use of deadly force was justified and is not subject to criminal prosecution under Delaware Law.