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June 11, 2010

Colonel Michael McGowan
New Castle County Police Department
3601 North DuPont Highway
New Castle, DE 19720


RE: AG Case # 17-10-01-0055, Police Use of Deadly Force Investigation
Officers Ryan Foti, Christopher Sarnecky, and Eric Sherkey
Date of Incident – November 11, 2009

Dear Colonel McGowan,

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Officers Ryan Foti, Christopher Sarnecky, and Eric Sherkey on November 11, 2009. 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 DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY POLICE USE OF DEADLY FORCE**

SUBJECT: Eric J. Weit

OFFICERS: Ryan Foti, Christopher Sarnecky, and Eric Sherkey

November 11, 2009

By: Timothy P. Mullaney Sr. 
Deputy Attorney General

Date: June 2, 2010

Scope of the Investigation

This is the final report of the Delaware Department of Justice on the investigation of Officers Ryan Foti, Christopher Sarnecky and Eric Sherkey of the New Castle County Police use of deadly force against Eric J. Weit. Special Investigator Thomas Penoza, 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.

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 New Castle Police (NCCPD) or whether, with the benefit of hindsight, the officers could have proceeded differently. This is a matter of a separate internal investigation to be undertaken by the New Castle County 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. Weit. 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 11/11/09 at 0041 hrs New Castle County Regional Communications (RECOM) dispatched officers to Chateau Orleans Apartments on Shipley Road for a report of a domestic involving Eric Weit, who was reported to be in possession of a handgun. NCCPD officers were dispatched to the scene. As the officers arrived at the apartment complex, officers were assigned to various locations to look for Eric Weit. During the time the officers were arriving at the scene, there was a sound of what appeared to be a gunshot from the direction of Philadelphia Pike near Forman Mills. Eric Weit's vehicle was found in the parking lot closest to Philadelphia Pike. Officer Sarnecky responded with his K-9 and started to track Weit. The K-9 tracked towards Philadelphia Pike and into the parking lot of Forman Mills. As the K-9 was tracking back towards the apartment complex, the K-9 located Weit at the edge of the wooded

area. Officer Sarnecky yelled "County Police, don't move" but Weit started to run and Officer Sarnecky yelled a command to the K-9 to engage Weit, who ran into the field just south of the lot where Weit's vehicle was parked. Officer Sherkey and Officer Foti were assigned to watch Weit's vehicle. When they heard Sarnecky announce the K-9 was engaging Weit, they walked from the parking lot into the field, towards Philadelphia Pike. As Weit ran into the field, Officer Foti observed that Weit was holding a handgun in his right hand and was waving the gun around as he was engaging the K-9. Officer Foti yelled "gun". At this time Weit was yelling, "I'll shoot, I'll kill this fucking dog and all of you too". Officer Foti announced, "County Police, get on the ground, get on the ground". Weit did not comply with Officer Foti's commands. Weit pointed the gun towards Officer Foti and Officer Sherkey. Both Officer Foti and Officer Sherkey fearing for their safety and that of other officers fired their weapons. Officer Foti fired his 9mm service weapon and Officer Sherkey fired his department issued rifle at Weit. Both fired multiple times until Weit fell to the ground.

At the same time that Officer Sherkey and Officer Foti were firing their weapons at Weit, Officer Sarnecky was crossing the creek and climbing the embankment, following his K-9. When Officer Sarnecky got to the edge of the wooded area he observed his K-9 engaging Weit and heard shots being fired. Sarnecky heard two different types of weapons being fired and thought that Weit was exchanging gun fire with other officers. Officer Sarnecky heard officers yelling commands to Weit, "get on the ground, get on the ground". After hearing these commands being shouted, Officer Sarnecky heard 3 more shots that he believed came from Weit. Officer Sarnecky knelt down and recalled his K-9. As the K-9 ran back to Officer Sarnecky, Weit turned towards Officer Sarnecky and Officer Sarnecky heard 3 more rounds fired. Officer Sarnecky believed that Weit was firing at him, so he returned fire with 3 rounds from his 9mm handgun. Officer Sarnecky then heard 3 or 4 more rounds fired and believed that Weit was firing at him again so he returned fire of 3 or 4 rounds. Weit yelled "I'm down and I'm done". Officer Foti and Officer Sherkey took Weit into custody.

Weit was shot five times. One shot appeared to have hit the gun and his right hand damaging the gun and injuring his hand. Weit was also hit in the right forearm, right shoulder, and two times in the left thigh. The two wounds on the left thigh were superficial. The K-9 was struck two times. Officer Sherkey fired eleven (11) rounds, Officer Foti fired seven (7) rounds, and Officer Sarnecky fired seven (7) rounds. There is no evidence that Weit fired any rounds from his weapon. His weapon was a Ruger 45 caliber handgun with four (4) live rounds in the eight (8) round magazine, and there was no round in the chamber. Weit was taken to Christiana Hospital where he was treated and released two days later.

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, New Castle County Police Officers Ryan Foti, Christopher Sarnecky, and Eric Sherkey's use of deadly force 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 such 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 Officers Foti, Sarnecky and Sherkey’s subjective state of mind which is of critical importance in determining whether their use of force was justifiable. The specific factual issue is whether Officers Foti, Sarnecky and Sherkey actually believed at the time that they intentionally fired their weapons that such action was necessary to protect themselves or others from death or serious physical injury, so long as these officers were 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 Officers Foti, Sarnecky and Sherkey fired their weapons, Mr. Weit, who had ignored numerous commands to drop his weapon and lay on the ground, continued to brandish his weapon and failed to heed the officers commands to get on the ground, pointed the weapon at the officers in a threatening manner and shouting his intent to use the weapon against the officers. The officers believed they were in immediate danger and that the use of deadly force was immediately necessary to prevent serious injury or death to each of them. 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, Officers Foti, Sarnecky and Sherkey’s use of deadly force was justified and is not subject to criminal prosecution under Delaware Law.