

**PRELIMINARY REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE PROBATION AND PAROLE USE OF DEADLY FORCE**

**SUBJECT: Jamera E. Fisher
OFFICER: Probation and Parole Officer Ricky Porter**

DATE OF INCIDENT: October 25, 2016

Dated: April 3, 2017

Scope of the Investigation

This is the preliminary report of the Delaware Department of Justice, Office of Civil Rights and Public Trust, on the investigation of the use of force by Delaware Probation and Parole Officer Ricky Porter (“Officer Porter”) of the Department of Correction (“DOC”) against Jamera E. Fisher (“Mr. Fisher”).¹ Investigators from the Office of Civil Rights and Public Trust examined the crime scene and also reviewed evidence, reports written by officers who responded to the scene and witness interviews. Attorneys with the Office of Civil Rights and Public Trust reviewed this use of force matter for the Department of Justice.

Purpose of the Department of Justice Report

The Department of Justice determines whether a law enforcement officer’s use of deadly force constitutes a criminal act. The Department of Justice 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 DOC or whether, with the benefit of hindsight, the officer could have proceeded differently.

The Department of Justice is releasing a preliminary report to notify Officer Porter and the public of our conclusion. As Mr. Fisher is still being prosecuted for offenses related to this incident, it would be inappropriate to issue detailed factual findings at this time. The Department of Justice’s final report will be released once those charges are resolved.

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 Officer Porter was not a criminal act because the use of such force against Mr. Fisher 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 Officer Porter’s subjective state of mind that is of critical importance in determining whether his use of force was justifiable. The specific factual inquiry is two-pronged. The first issue is whether Officer Porter actually believed at the time that he

¹ Officer Porter is a DOC Probation and Parole Officer assigned to work along with Dover Police Department officers in the Safe Streets Unit.

intentionally fired his weapon that such action was necessary to protect himself or others from death or serious physical injury. The second issue is whether Officer Porter was reckless or negligent in having such belief, or in acquiring or failing to acquire any knowledge or belief, which was material to the justifiability of the use of force. 11 *Del. C.* § 470(a).

The investigation of the facts and circumstances fully support the reasonableness of Officer Porter's belief that his life and the lives of others were in danger. That belief was not formed recklessly or negligently. As a result, the use of deadly force was justified and is not subject to criminal prosecution.