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September 14, 2010

Chief Michael Szczerba
Wilmington Police Department
McLaughlin Public Safety Building
300 North Walnut Street
Wilmington, DE 19801


RE: AG Case # 17-10-01-0072, Police Use of Deadly Force Investigation
Subject: Eric T. Howell
Officer: Detective John Ciritells
Date of Incident: February 4, 2010

Dear Chief Szczerba,

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Detective John Ciritella on February 4, 2010. As a result, the officer'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. A copy of my report is attached. Please contact me if you have any concerns or questions.

Sincerely,



Timothy P. Mullaney Sr.
Deputy Attorney General

Enclosure

**REPORT OF THE DEPARTMENT OF JUSTICE
WILMINGTON POLICE USE OF DEADLY FORCE**

SUBJECT: Eric T. Howell

OFFICER: Detective John Ciritella

February 4, 2010

By: Timothy P. Mullaney Sr. 
Deputy Attorney General

Date: September 13, 2010

Scope of the Investigation

This is the final report of the Delaware Department of Justice on the investigation of Detective John Ciritella of the Wilmington Police use of deadly force against Eric T. Howell. Special Investigator Anthony R. Davolos, 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 Wilmington Police Department (WPD) 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 Wilmington Police Department. The sole purpose of the Department of Justice's investigation of this shooting is to determine whether the officer committed a crime when they used deadly force against Eric T. Howell. 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 February 4, 2010, at approximately 0208 hours, uniformed officers and detectives of the Wilmington Police Department were investigating a homicide at 218 Broom Street, Wilmington DE. Two Deputy Attorneys General (DAG) were also on the scene. At that time the DAGs were being escorted to their vehicles by Detective John Ciritella. Their vehicles along with Detective Ciritella's were parked just north of the homicide scene on Broom Street facing south. Detective Ciritella was wearing a blue fleece jacket and his bulletproof vest marked "Police" as he walked with the DAGs. As Detective Ciritella and one of the DAGs approached their respective vehicles parked together, Detective Ciritella observed two black males kneeling on the sidewalk on the southwest corner of Broom and 3rd Street. Detective Ciritella observed another black male, later identified as Eric T. Howell, wearing a bandana covering his face. This

subject was pointing a gun directly at the two males kneeling and yelling at them in a threatening manner. The subject then fired a shot in the direction of the kneeling subjects. Detective Ciritella drew his weapon as he moved to the driver's side of his vehicle approximately fifty four feet from the armed subject. Detective Ciritella announced his presence by yelling "Police" and giving verbal commands to the armed subject to drop his weapon. The subject immediately turned his weapon pointing it directly at Detective Ciritella. Detective Ciritella then believing the subject was executing the two kneeling subjects, fired four (4) rounds in rapid succession from his service weapon, a 40 caliber Smith & Wesson. One round struck the armed subject (Howell) in the head incapacitating him. A second round struck one of the kneeling subjects (Darrell Swain) in the head fatally wounding him. The final two shots hit a car and a tree.

Later investigation revealed that Eric Howell was in the process of robbing the two kneeling subjects at the time Detective Ciritella came upon them. Statements made by Detective Ciritella were supported by witness statements. An accomplice was sitting in a vehicle a short distance from the scene and fled after the shooting. Eric Howell was taken to Christiana Hospital and admitted for a head wound. He was treated and later released. Darrell Swain was transported to Christiana Hospital and pronounced dead at 0230 hours.

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, Wilmington Police Detective John Ciritella'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 Detective Ciritella'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 Detective Ciritella 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 Detective Ciritella 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 Detective Ciritella fired his weapon, Eric Howell, who had ignored numerous commands to drop his weapon, pointed his weapon at Detective Ciritella in a

threatening and deliberate manner. Detective Ciritella believed he was in immediate danger as were the civilians being held up and that the use of deadly force was immediately necessary to prevent serious injury or death to him and the civilians present. 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, Detective Ciritella's use of deadly force was justified and is not subject to criminal prosecution under Delaware Law.