

REPORT OF THE ATTORNEY GENERAL

NEW CASTLE COUNTY AND ELSMERE POLICE DEPARTMENTAL SHOOTING

OCTOBER 19, 2005

CARL DANBERG  
ATTORNEY GENERAL

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DATE

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## SCOPE OF THE INVESTIGATION

This is the report of the Office of the Attorney General on the use of deadly force against Charles Wittland, October 19, 2005. Special Investigator Robert Carmine of the Delaware Department of Justice conducted the investigation for the Department of Justice and Deputy Attorney General Eugene M. Hall supervised the investigation and review of the use of force for the Office of the Attorney General. Statements were taken from police officers who were at the scene. Physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, a video tape of the scene and medical records were reviewed.

## THE FACTS

On October 19, 2005 New Castle County Police Officer Patrolman Joseph Ragan was assigned to investigate a report of criminal mischief that occurred at 5 Yale Avenue, Latimer Estates, Wilmington, Delaware involving an older white male who was disorderly and throwing rocks at the windows at 5 Yale Road. The Officer was advised by the victim that the suspect was a man named Charlie who was driving an older model grayish Celebrity. He was told that the suspect lived somewhere on Cedar Street in Wilmington and was well known to the Wilmington City Police. The victim also added that the suspect liked to sit in his car parked in Banning Park during the day.

Officer Ragan contacted Officer Thomas Jackson, New Castle County Police Department, by radio and requested he check the area of Banning Park for the suspect and vehicle whose description he supplied. Officer Jackson responded to Banning Park at approximately 1438 hours and observed a vehicle matching the suspect vehicle occupied by an older white male. The vehicle was parked near the ball fields, backed in towards the grassy section of the parking lot.

Officer Jackson approached the operator and asked him questions about the broken windows to which the subject replied "yeah, I broke some windows." The subject would not make eye contact with Officer Jackson during their discussion. When asked for identification, the suspect responded to Officer Jackson "you know who I am." Officer Jackson had no knowledge of who the suspect was and had never seen him before.

Officer Jackson obtained the registration number of the suspect vehicle and ran it through RECOM. He learned the car was registered to Charles Wittland and that there was an outstanding warrant on file with Wilmington PD for Charles Wittland. Officer Jackson ran Charles Wittland's name through DELJIS and discovered prior resisting arrest charges. He contacted Officer Ragan and advised him of his findings and requested a backup unit from RECOM to assist in taking Mr. Wittland into custody. Officer Jackson also ran a motor vehicle inquiry on Mr. Wittland and obtained his photograph, which he identified as being the same subject in the car.

Elsmere PD Officer John Mitchell, III, while on patrol, heard the request for backup at Banning Park and responded to Officer Jackson's location. Officer Ragan, New Castle County PD, also advised he was responding. Officer Jackson observed during these several minutes that Mr. Wittland did not move or look around, but sat staring straight ahead from the driver's seat of his vehicle.

Patrolman Mitchell arrived on the scene followed shortly by Patrolman Ragan. Both officers were advised by Officer Jackson of the suspect's DELJIS arrest history and the outstanding warrant against him.

All three officers approached the driver's side of the suspect's vehicle. Officer Jackson advised Mr. Wittland of the outstanding warrant and informed him he would have to go with the officers. Mr. Wittland responded "I'm not going anywhere." Officer Ragan continued to speak to Mr. Wittland through the open driver's window advising him of the active warrant and ordered him to exit his vehicle several times.

Mr. Wittland, according to officers, responded with profanities and stated, "I ain't going nowhere. Do what you have to do." As Officer Ragan opened the driver's door, Mr. Wittland reached across the seat and grabbed a black-handled knife, with an overall length of 8 ¾ inches with a 4 ½ inch blade, and raised it in his right hand to his upper chest area in close proximity to Officer Ragan's face and advised "You ain't taking me nowhere." Officer Ragan advised the other officers that the suspect was armed with a knife and the officers backed away from the open door.

RECOM was advised of the suspect with a knife and a unit with a taser (a non lethal weapon) was requested to respond. Officers Jackson, Ragan and Mitchell continued advising the suspect to put the knife down. The suspect refused all orders and continued to hold the knife in his right hand and stare out the windshield of the car.

Officer Ragan positioned himself behind the open door. Officer Jackson was near the driver's side, rear fender, and Officer Mitchell was at the rear trunk area of the car.

Detective Grant, NCCPD, arrived on the scene and secured his taser weapon from the trunk of his car. He approached the open passenger window of Mr. Wittland's car and issued commands to the suspect to put down the knife which the suspect was still holding in his right hand with the blade facing up.

The subject profanely refused, and Detective Grant displayed the taser so that the subject could see it and issued two to three additional commands and warnings that unless the subject put down the knife and got out of the car he would be tasered. Mr. Wittland refused and Detective Grant fired the taser at Mr. Wittland's right side, upper torso. The electrical shock appeared to affect Mr. Wittland for approximately a second, but did not cause him to drop the weapon or incapacitate him. It was later discovered that one of the probes had come loose and lost contact with Mr. Wittland.

Immediately after cursing Detective Grant, Mr. Wittland exited the open driver's door and charged towards the rear of the car towards Officer Mitchell with the knife in his right hand, the blade facing up. Officer Mitchell, who had already drawn his service weapon, began to back pedal into the grassy area to try to put distance between himself and Mr. Wittland with the knife. Meanwhile, Detective Grant had drawn his service weapon and began moving along the passenger's side of the car toward the trunk area while aiming or drawing down on Mr. Wittland. As Officer Mitchell was backing up, he began to fall and, fearing the subject would be upon him, he fired one shot. At this time, Detective Grant fired five shots at the running man. Detective Grant fired from the left side of the subject and apparently one bullet grazed the subject's stomach area, three hit him in the back, and one struck him in the left side of the head behind his ear. The subject fell to the ground and officers began CPR. An EMT-trained

civilian, who happened to be in the park, assisted the Officers with CPR. Charles Wittland was then transported by helicopter to Christiana ER where he succumbed to his injuries.

### PURPOSE OF THE ATTORNEY GENERAL REPORT

The Attorney General'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.

The only purpose of the Attorney General's investigation of this shooting is to determine whether the officers committed a crime when they used deadly force against Charles Wittland. This report expresses no opinion whether the officers' actions complied with any departmental policies or procedures concerning the use of force set by the New Castle County Police Department and the Elsmere Police Department. This is a matter of a separate internal investigation being undertaken by the New Castle County Police and the Elsmere Police departments, respectively.

### CONCLUSION

With respect to Officer James Mitchell III, Section 464 of Title 11 of the Delaware Code generally defines the legal use of force in self-protection cases. It provides that the use of force upon another person is justified when the individual using the force believes that it is immediately necessary for the purposes of protecting himself against the use of unlawful force by the other person. The law also provides that using deadly force is justified if the person using the force believes that such force is necessary to protect himself against death (or) serious physical injury. Under Delaware Law, it is the subjective state of mind of Officer Mitchell that is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Officer Mitchell 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.

After a thorough investigation and review of all the statements, reports and other evidence described above, it is the conclusion of the Office of the Attorney General that, as a matter of Delaware Law, Officer James Mitchell's use of deadly force was justified in this case. At the time Officer Mitchell fired his weapon, Charles Wittland was charging at him with a knife. Officer Mitchell began to back away from Wittland and lost his footing and began to fall. Officer Mitchell believed that the use of deadly force was immediately necessary to prevent serious injury or death to himself. The investigation of the facts and circumstances of the shooting fully support the reasonableness of that belief. As a result, Officer Mitchell's use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware law.

With respect to Detective Brian Grant, Section 465 of Title 11 of the Delaware Code generally defines the legal use of force for the protection of other persons. It provides in part, that the use of force upon another person is justifiable in order to protect a third

person when: 1) the individual using the force would have been justified in using such force to protect himself against injury which he believes is being threatened to the person he seeks to protect and, 2) under the circumstance as the individual using the force believes them to be the person who the individual seeks to protect would have been justified in using such protective force; and, 3) the person using the force believes that intervention is necessary for the protection of the other person. Additionally, the use of deadly force is justifiable if the individual using such force believes that it is necessary to protect a third person or persons from the threat of death or serious physical injury. Therefore, under Delaware Law, it is Detective Grant's subjective state of mind which is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether he actually believed at the time that he intentionally fired his weapon that such action was necessary to protect another person from death or serious physical injury.

At the time Detective Grant fired his weapon, Charles Wittland was charging Officer Mitchell with his knife in a threatening manner. Detective Grant believed that the use of deadly force was immediately necessary to prevent serious injury or death to Officer Mitchell. The investigation of the facts and circumstances fully support the reasonableness of that belief. As a result, Detective Grant's use of deadly force was justified and is not subject to criminal prosecution under Delaware law.