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January 22, 2008

Colonel Thomas F. MacLeish  
Delaware State Police  
P. O. Box 430  
Dover, DE 19903-0430

RE: Use of Deadly Force --- Detective Joseph Rose

Dear Colonel MacLeish:

Enclosed please find a copy of the Report of the Attorney General regarding the August 20, 2007 Delaware State Police shooting.

Thank you for your cooperation during the course of our investigation. Please contact me if you have any questions.

Very truly yours,

Eugene M. Hall  
Director of Fraud Division

EMH/mam  
Enclosure

REPORT OF THE DEPARTMENT OF JUSTICE  
DELAWARE STATE POLICE USE OF DEADLY FORCE

AUGUST 20, 2007

By: Eugene M. Hall  
Deputy Attorney General

Date: January 22, 2008

## **SCOPE OF THE INVESTIGATION**

This is the final report of the Delaware Department of Justice on the use of deadly force against John Boyer by Detective Joseph Rose of the Delaware State Police on August 20, 2007. Director of Special Investigations Robert Carmine conducted the investigation. Deputy Attorney General Eugene M. Hall 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. They also reviewed physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, videos and medical records.

## **PURPOSE OF THE ATTORNEY GENERAL'S INVESTIGATION**

The Department of Justice's investigation of police shootings serves a specific but limited purpose. The Department determines whether a police 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 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.

This report expresses no opinion whether the officers' actions complied with the departmental policies or procedures concerning the use of force set by the Delaware State Police or whether, with the benefit of hindsight, the officer could have proceeded differently. This is a matter of a separate internal investigation being undertaken by the Delaware State Police. The only purpose of the Department's investigation of this shooting is to determine whether the officer committed a crime when he used deadly force against John Boyer. One of the issues that must be considered in any intentional shooting is whether the use of deadly force was justified under all of the circumstances.

## **FACTS OF THE INVESTIGATION**

Detective Joseph Rose, of the Delaware State Police, was assigned to a robbery surveillance team which was focusing on armed robberies in the Kirkwood Highway area. Their investigation had centered on two individuals, John Boyer and John Burrows, who the police believe were responsible for several recent armed robberies. The robbery surveillance teams began a mobile surveillance on the vehicle occupied by John Boyer, John Burrows and two other individuals. During the course of following the suspect vehicle, it was observed pulling into the rear of the Video Adventure store in the Astro Shopping Center on the Kirkwood Highway. John Boyer and John Burrows exited the vehicle and went to the front of the store and peered inside. They then left and

drove around the area. While they were doing this, two State Police Detectives contacted the store and informed the clerk that his store was a possible robbery target. The clerk let the two detectives into the back room of the store so that they could set up surveillance and security. A short time later the suspects returned to the video store, and John Boyer and John Burrows exited the vehicle and approached the front door of the store. Both were wearing black hooded sweatshirts with the hoods up over their heads and holding the bottom of the hoods up over their chins in an effort to conceal their identities. At the time of the robbery, the only people in the store (other than the two officers in the back room) were the clerk and one customer. They were both near the counter area of the store when the two robbers entered. John Boyer held a long-bladed kitchen knife on the customer while John Burrows confronted the clerk with a box cutter knife and demanded the money. As the clerk complied and opened the cash drawer, John Boyer left the customer and went to the counter. As the suspects were taking the cash from the drawer the clerk and customer backed away from the robbers.

At this time the two State Detectives, who had been in the back room, ran to the front of the store and confronted the suspects. They identified themselves as State Police and ordered the suspects to the ground. The suspects did not comply and attempted to flee. Additional troopers were now coming in the front door and apprehended Burrows and forced him to the floor. Boyer ran around a display rack and was grabbed by Detective Rose and two other detectives. It was at this time that Detective Rose observed the long-bladed kitchen knife in John Boyer's hand. He shouted "knife" and backed away drawing his service weapon. Detective Rose ordered John Boyer to drop the knife several times and told him that if he didn't comply he, Detective Rose, would shoot. John Boyer did not drop the knife, but attempted to flee.

The robbery and above events were captured on the store's video surveillance system. On the store security video tape, John Boyer can be seen turning a corner around a display rack and, seeing more troopers, turning back in the direction of Detective Rose with the knife still held in front of him. As he stepped toward Detective Rose with the knife, Detective Rose fired two times striking John Boyer in the leg with one bullet. The other lodged in the wall behind John Boyer. First aid was administered and paramedics responded. Both John Boyer and John Burrows were transported to the Christiana Hospital under guard.

### **CONCLUSION**

With respect to Detective Joseph Rose, 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 further 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 Detective Rose that is of critical importance in

determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Detective Rose 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, provided however, that the officer 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.

After a thorough investigation and review of all the statements, reports, video and other evidence described above, it is the conclusion of the Office of the Attorney General that, as a matter of Delaware Law, Detective Rose's use of deadly force was justified in this case. At the time Detective Rose fired his weapon, John Boyer had refused to comply with numerous commands to put down his knife, had physically resisted officers' attempts to take him into custody, was armed with a knife and made a movement toward Detective Rose with the knife in his hand. Detective Rose 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 supports the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Detective Rose's use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware law.