

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

**SUBJECT: Dennis E. Hicks**

**OFFICER: Cpl. Lloyd M. McCann**

**DATE OF INCIDENT: June 25, 2014**

**By: Allison E. Reardon  
Deputy Attorney General  
March 23, 2015**

## **Scope of the Investigation**

This is the final report of the Delaware Department of Justice on the investigation of the use of force by Corporal Lloyd M. McCann (Cpl. McCann) of the Delaware State Police against Dennis E. Hicks. Special Investigator Alan Rachko conducted the investigation. Director of Special Investigations Robert Irwin supervised the investigation, and Deputy Attorney General Allison E. Reardon reviewed the use of force for the Department of Justice. Investigators examined the 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 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 to be undertaken by the Delaware State Police. The sole purpose of the Department of Justice's investigation of the use of deadly force is to determine whether the officer committed a crime when he used deadly force against Mr. Hicks. One of the issues that must be considered in any law enforcement officer involved shooting is whether the use of deadly force by a law enforcement officer was justified under all the circumstances.

## **The Facts**

On June 25, 2014, at approximately 6:45 a.m., Delaware State Police Cpl. Lloyd M. McCann was on duty and was traveling southbound on SR 1 [Bay Road] south of Frederica when he clocked a black Honda Accord in the northbound lanes, traveling at 76 miles per hour in a 55 mile-per-hour speed zone. Cpl. McCann made a u-turn and began pursuing the vehicle. At this point, Cpl. McCann's in-car video began recording, and continued to record throughout the incident. Cpl. McCann was operating a marked Delaware State Police patrol car and was in full uniform.

Cpl. McCann caught up with the vehicle on northbound SR 1 at Bowers Beach Road and ran the license plate. The registration check indicated that the driver was most likely Dennis Hicks, who was wanted on active felony warrants for a domestic incident involving his girlfriend that had occurred at approximately 1:26 a.m. that morning. With Cpl. McCann following directly behind the vehicle, Mr. Hicks changed lanes on northbound SR 1 moving from the right lane to the left and then turned left crossing over the southbound lanes of SR 1. Mr. Hicks drove through

the stop sign at Mulberrie Point Road, turned right onto Clapham Road and proceeded north into Magnolia. Cpl. McCann followed behind the Honda and activated his emergency lights and siren. Mr. Hicks failed to stop and accelerated the Honda, continuing into and through Magnolia, finally slowing and making a right turn onto West Birdie Lane. Cpl. McCann continued to follow behind the vehicle. As Mr. Hicks began to make a left turn onto Bay Hill Lane, he stopped the vehicle suddenly in the roadway. Cpl. McCann stopped his vehicle behind the Honda in the intersection of Bay Hill Lane and West Birdie Lane. Mr. Hicks exited the driver's door of the Honda with a handgun in his right hand, turned toward Cpl. McCann and started shooting. Cpl. McCann was shot in the right hand and the right side of his face while attempting to exit his vehicle and returned fire, striking Mr. Hicks three times and causing Mr. Hicks' death. After Mr. Hicks fell motionless to the ground, Cpl. McCann withdrew behind his vehicle. He asked a witness at the scene to call 911 and then went back to his car to call for assistance.

According to Mr. Hicks' mother, Mr. Hicks had attempted suicide by ingesting pills several months earlier because of problems with his girlfriend. On the morning of June 25, 2014, shortly after the domestic incident in which Mr. Hicks was accused of holding a knife to his girlfriend's throat and threatening to kill her, he called his mother and told her he had had a fight with his girlfriend. At 3:01 a.m. he followed up the call and texted his mother "Mom I love u always not going back." At 3:03 a.m. he texted his father "Dad I love you". At 3:12 a.m. he sent a text to [name omitted] "U know I care alot about u". At 3:17 a.m. Mr. Hicks sent a text to an ex-girlfriend and the mother of his son "Tell [name omitted] that I love him." Shortly thereafter, Mr. Hicks' cell phone records show multiple calls to and from his mother. In addition, starting at 6:01 a.m., he made a series of 6 calls to his girlfriend that went unanswered. At 6:25 a.m. Mr. Hicks sent a Facebook message to her asking "what did you tell the police". He placed the final call to his girlfriend at 6:31 a.m., fourteen minutes before Cpl. McCann clocked him travelling northbound on SR 1 at 76 miles per hour and began pursuit for the traffic violation.

Mr. Hicks, armed with a handgun, drove at a high rate of speed with Cpl. McCann in pursuit and turned onto the street where his girlfriend lived - which was also the scene of the earlier domestic dispute - when he abruptly stopped his vehicle and fired at Cpl. McCann. At the time, Mr. Hicks' girlfriend was outside, getting into her car to leave for work.

### **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, Delaware State Police Cpl. Lloyd McCann'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".

Under Delaware law, it is Cpl. McCann's subjective state of mind that is of critical importance in determining whether his use of force was justifiable. The specific factual issue is

whether Cpl. McCann actually believed at the time he intentionally fired his weapon that such action was necessary to protect himself from death or serious physical injury, so long as he 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.

Mr. Hicks abruptly brought his car to a stop while Cpl. McCann was in pursuit. Mr. Hicks then exited the vehicle and began firing at Cpl. McCann, wounding him twice before Cpl. McCann, fearing for his life, discharged his firearm, striking and killing Mr. Hicks. The investigation of the facts and circumstances fully support the reasonableness of Cpl. McCann's belief that his life was in danger. That belief was not formed recklessly or negligently. As a result, Cpl. McCann's use of deadly force was justified and is not subject to criminal prosecution.