

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

**SUBJECT: William F. McNulty**

**OFFICERS: Cpl. William D. Yeldell  
Cpl./1David J. Hudak**

**DATE OF INCIDENT: November 14, 2014**

**By: Allison E. Reardon  
Deputy Attorney General  
June 1, 2015**

## **Scope of the Investigation**

This is the final report of the Delaware Department of Justice, Office of Civil Rights and Public Trust, on the investigation of the use of force by Corporal William D. Yeldell (Cpl. Yeldell) and Corporal/1 David J. Hudak (Cpl./1 Hudak) of the Delaware State Police against William F. McNulty ("McNulty"). Special Investigator Franklin Robinson 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 this Department of Justice investigation is to determine whether the involved officers committed a crime when they used deadly force against Mr. McNulty. One of the issues that must be considered in any law enforcement officer-involved shooting is whether the use of deadly force by the officer was justified under all the circumstances.

## **The Facts**

On November 14, 2014, one robbery and two attempted robberies were reported in the early morning hours in Claymont and New Castle. At approximately 1:45 am, an 80 year old male reported that he was approached by a black male subject who brandished a handgun and demanded money. When the victim advised he had no money, the subject entered the passenger side of a dark blue imported car and fled.

At approximately 5:58 am, a 68 year old female was attempting to make a cash withdrawal from the ATM located at the M&T Bank on Philadelphia Pike in Claymont when she was approached by a white male 5-09 to 6-00, 275 to 300 lbs, wearing a plaid colored jacket over a gray hooded sweatshirt. The suspect displayed a handgun and shoved it into her side while placing his arm around her shoulders and demanding her money. Due to the stress of the encounter, the victim was unable to complete her cash withdrawal and advised the suspect she had no money. He then fled the scene on foot.

At approximately 6:15 am, a clerk from the 7-11 located on Foulk Road in Wilmington reported a robbery at the store. He advised that a white male, approximately 350 lbs, beard, wearing a blue and white flannel shirt with a black and gray undershirt, blue jeans and an orange Orioles baseball hat approached the counter to purchase a hotdog. During the course of the transaction, the suspect produced a handgun and demanded money. The suspect exited the store after receiving \$50.00 in \$5.00 bills. The suspect fled from the business in a blue Toyota Corolla.

Detective Rizzo, Troop 2 Robbery Squad, was able to obtain a still photograph from the 7-11 robbery, which depicted the suspect in that incident. The photograph was disseminated and William F. McNulty was identified as the suspect. Police formed the belief that the robberies were committed by the same person or persons. Due to the fact the suspect in the first robbery exited from the passenger side of a dark blue imported car, police believed that Mr. McNulty was operating the suspect vehicle in that incident and committed the crime in concert with a person unknown. Det. Rizzo developed probable cause for the arrest of Mr. McNulty for the attempted robbery that occurred at the ATM located at the M&T bank on Philadelphia Pike and for the robbery that occurred at the 7-11 on Foulk Rd.

Officers from Troop 1, Troop 2 and Delaware State Police Helicopter Trooper 4 were involved in the investigation of the robberies and the pursuit of Mr. McNulty. Officers began canvassing areas Mr. McNulty was known to frequent and set up perimeters in and around Claymont. At approximately 11:23 am, Detective Daniel Grassi of the Troop 2 Robbery Squad observed the suspect vehicle on Harvey Road in the area of Philadelphia Pike. Detective David May, also of the Troop 2 Robbery Squad, responded to the area to assist Detective Grassi. The suspect vehicle was observed entering the Harbor House Apartments complex. The detectives entered the complex, intending to approach Mr. McNulty after he stopped his vehicle. Mr. McNulty started to park but spotted the detectives and pulled immediately out of the space and attempted to flee the complex in his vehicle. Det. Grassi had moved into position to block Mr. McNulty from getting away, however, Mr. McNulty intentionally struck Det. Grassi's unmarked police vehicle, continued to accelerate, pushed Det. Grassi's vehicle out of the way, and fled the complex. Det. Grassi reported that he had opened his door and was about to exit his vehicle to take Mr. McNulty into custody when his vehicle was hit. The detectives engaged in a pursuit of Mr. McNulty, however, the pursuit was called off by Det./Sgt. Hawk due to his concern about the substantial risk to the public stemming from Mr. McNulty's reckless driving and his high rate of speed in residential neighborhoods. Immediately following this incident, a black Replica Beretta Airsoft gun was recovered from a roadway in one of the neighborhoods Mr. McNulty was believed to have traveled through after fleeing.

DSP Cpl. Daniel McColgan was familiar with Mr. McNulty and spoke with him by telephone in an effort to convince him to turn himself in. Mr. McNulty advised Cpl. McColgan that he was "not going back to jail." This statement was relayed to all units by the DSP dispatch center around 2:25 pm to advise them of Mr. McNulty's state of mind and Cpl. McColgan advised all units to use extreme caution.

Mr. McNulty's vehicle was then spotted a second time by troopers in the area of Harvey Road, but he was again able to elude troopers in the community of Arden. An air and ground

search commenced for Mr. McNulty or the vehicle, with negative results. Residents of the community made calls to 911 and reported seeing either a white male subject running through their yards or the suspect vehicle driving through the area.

Troopers later saw Mr. McNulty dropping off two black male passengers in the neighborhood of Knollwood, and Cpl. Yeldell and Cpl. Hudak began another pursuit of Mr. McNulty. The pursuit continued onto Interstate-495, with speeds exceeding 120 miles per hour. Once DSP air asset Trooper 4 was overhead, the pursuit was discontinued by Det./Sgt. Hawk in the area of Governor Printz Boulevard due to safety concerns. Trooper 4 maintained a visual on Mr. McNulty until he was able to elude surveillance.

During a check of the area, detectives once again located Mr. McNulty operating his vehicle in the area of Top of the Hill Apartments and maintained surveillance on him until marked units could be directed in. Cpl. Hudak and Cpl. Yeldell activated their emergency equipment and attempted to stop Mr. McNulty. Mr. McNulty fled, again traveling at a high rate of speed, disregarding traffic control devices, presenting a danger to vehicles, school buses and pedestrians in the area. The in-car video from Cpl. Yeldell's vehicle revealed that Mr. McNulty was traveling between 60 and 70 mph in a residential area, where the posted speed limit is 25 mph. During the final pursuit, Mr. McNulty slowed slightly to turn onto Harvey Road. Cpl. Yeldell seized the opportunity to initiate a maneuver to block Mr. McNulty's path of travel by pulling his fully marked police vehicle in front of Mr. McNulty's car. Cpl. Yeldell struck the left front of Mr. McNulty's vehicle with the right side of his police vehicle. Both vehicles then came to a stop. Cpl./1 Hudak who was behind Cpl. Yeldell during the pursuit stopped his fully marked police vehicle behind Mr. McNulty's, making contact with his rear bumper to prevent Mr. McNulty from fleeing again.

After coming to a stop, Cpl. Yeldell, who was in full DSP uniform, exited his vehicle and rushed to the driver's door of Mr. McNulty's vehicle. As Cpl. Yeldell was attempting to break out the driver's side window and open the door of Mr. McNulty's vehicle, Mr. McNulty reached toward the center console and put his vehicle in reverse, causing the white reverse lights to illuminate, revving his engine with the wheels spinning, and attempted to rapidly accelerate backwards into Cpl. Hudak's vehicle. Cpl. Yeldell drew his department-issued Sig Sauer semi-automatic handgun and fired at Mr. McNulty. Mr. McNulty put his vehicle in drive and proceeded forward striking the right rear of Cpl. Yeldell's vehicle. Mr. McNulty freed his vehicle, jumped the curb, continued into a grassy area, and struck a stand of trees. Cpl. Yeldell (with handgun drawn) and Cpl. Hudak (weapon still holstered) approached Mr. McNulty's vehicle from the rear. The white reverse lights for the vehicle suddenly illuminated, Cpl. Hudak drew his department-issued Sig Sauer semi-automatic handgun, and he and Cpl. Yeldell discharged their weapons, continuing to fire as Mr. McNulty drove backward toward them.

Mr. McNulty's vehicle came to a stop. After Cpl. Yeldell and Cpl. Hudak perceived that the threat presented by Mr. McNulty had ceased, they approached the vehicle. Lt. Sean Duffy arrived on scene while the event was transpiring, and all troopers worked to remove Mr. McNulty from his vehicle to initiate life saving measures. Trooper medics arrived on the scene and initiated advanced life support measures. Mr. McNulty was transported to the Christiana Hospital emergency room, where he was pronounced dead at 6:41pm.

Witnesses who were operating vehicles on Harvey Road at the time of the incident were interviewed and provided statements. Although they did not see the actual shooting, they heard the officers' commands to stop and one witness stated that he thought the driver of the car was attempting to run over the officers.

During the course of the investigation, it was discovered that the Toyota Corolla operated by Mr. McNulty was stolen, along with another vehicle, from the Price Toyota dealership on November 12, 2014. Surveillance video captured Mr. McNulty in the lot of the dealership on the day of the thefts. Witnesses also stated that Mr. McNulty had been drinking heavily and may have been doing drugs. Subsequent toxicology results showed alcohol and drugs in his system.

### 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 Delaware State Police Officers Corporal William D. Yeldell and Corporal/1 David J. Hudak 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 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 Cpl. Yeldell's and Cpl./1 Hudak's subjective state of mind that is of critical importance in determining whether their use of force was justifiable. The specific factual issue is whether Cpl. Yeldell and Cpl./1 Hudak actually believed at the time that they intentionally fired their weapons that such action was necessary to protect themselves or others from death or serious physical injury, so long as these officers were 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.

During the final pursuit, Cpl. Yeldell and Cpl./1 Hudak chased Mr. McNulty in fully marked Delaware State Police vehicles with emergency equipment activated. Both officers were also in full uniform clearly identifying them as Delaware State Police officers. Cpl. Yeldell stated that he believed Mr. McNulty's actions created a risk to the public at large and seized an opportunity to block Mr. McNulty's vehicle. Cpl. Yeldell stated that he was in fear for his own life and for the life of Cpl./1 Hudak when Cpl. Yeldell discharged his weapon. Cpl. Hudak believed he was in danger when he saw the vehicle's reverse lights and discharged his weapon as Mr. McNulty drove backward toward him.

The investigation of the facts and circumstances fully support the reasonableness of Cpl. Yeldell's and Cpl./1 Hudak's belief that their lives were in danger. That belief was not formed recklessly or negligently. As a result, the use of deadly force by Cpl. Yeldell and by Cpl./1 Hudak was justified and is not subject to criminal prosecution.