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July 8, 2009

Colonel Robert M. Coupe  
Superintendent  
Delaware State Police  
P. O. Box 430  
Dover, DE 19903

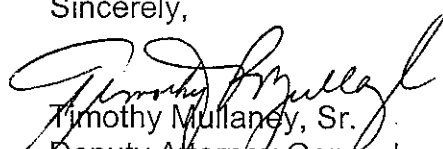
RE: Use of Deadly Force – Trooper William Harris

Dear Colonel Coupe:

The Department of Justice has completed its investigation and review of the use of deadly force by Trooper William Harris on March 25, 2009. As a result, Trooper Harris' 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. Please contact me if you have any questions.

Sincerely,



Timothy Mullaney, Sr.  
Deputy Attorney General

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REPORT OF THE DEPARTMENT OF JUSTICE  
DELAWARE STATE POLICE DEPARTMENTAL SHOOTING

March 25, 2009

JOSEPH R. BIDEN  
ATTORNEY GENERAL

By: TIMOTHY MULLANEY, SR.  
Director of Fraud Division

## SCOPE OF INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against Fabian Silvestre by Trooper William Harris Delaware State Police Troop 6 on March 25<sup>th</sup> 2009. Special Investigator William Osowski conducted the investigation for the Department of Justice. Deputy Attorney General Timothy Mullaney, Sr. supervised the investigation and review of the use of force for the Department of Justice. Statements were taken from the officer, other 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 action 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 Delaware State Police or whether, with the benefit of hindsight, the officers 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 Silvestre Fabian. 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

On March 25<sup>th</sup> at approximately 0243hrs while on routine patrol in the area of the 1400 block of E. Newport Pike Trooper William T. Harris noticed a naked man (later identified as Fabian Silvestre) run out into the roadway. Trooper Harris turned his vehicle around to go back to locate the man. Trooper Harris located the man who now was in the middle of the roadway and was lying face down spread eagle in front of Alpha Pizza, 1401 E. Newport Pike, Wilmington, DE. The subject Silvestre was screaming in Spanish and Trooper Harris approached him, tapping the subject Silvestre on the left shoulder and asking him to get up. The subject started banging his face on the roadway and then he looked up at Trooper Harris, who described his eyes as black with no white showing. Subject Silvestre stated, "I fucking kill you" and sprang to his feet and wrapped his arms around the chest area of Trooper Harris. Trooper Harris pushed Silvestre away and punched Silvestre with his right hand, in an attempt to knock him further away. It was at that point that Silvestre punched Trooper Harris and dislocated his right shoulder. Trooper Harris managed to pop his shoulder back into the socket. Silvestre kept yelling, "I fucking kill you" and was throwing punches that were striking Trooper Harris numerous on his upper body.

Trooper Harris yelled into his radio for help. Silvestre then grabbed the cable that was attached to the microphone ripping it from Trooper Harris' radio and using it to strike Trooper Harris. Trooper Harris started to back up yelling at Silvestre to stop. At this point the attack continued into to the south side parking lot of Alpha Pizza with Trooper Harris continually blocking strikes by Silvestre who was now using the cable and attached microphone as a weapon. Trooper Harris attempted, with his good left hand, to spray Silvestre with his Capstan/pepper spray but Silvestre knocked it out of his hand with his continued striking with the microphone. Trooper Harris continued to back up into the parking lot until his back was up against the rear retaining wall. Trooper Harris, fearing for his life, not knowing if his call for help was received and

fighting with one arm, removed his hand gun with his left hand (Trooper Harris is left handed) and with the suspect still advancing and swinging the microphone cable, fired one round which missed Silvestre, who continued his attack. A witness to the attack started to call 911 at Trooper Harris' request. Trooper Harris then fired a second shot which struck Silvestre in the shoulder area. Silvestre went down to one knee, but stood up, bleeding and started toward Trooper Harris. Cpl. Price Fanning DSP then arrived and used his taser. Trooper Harris put his gun away and let Cpl. Fanning, Cpl. Truit DSP and Trooper Evans, who all came to his aid, use their tasers on Silvestre before he was taken under control. It took six taser darts and two direct contacts with a taser to finally control Silvestre. First aid was rendered and Silvestre and Trooper Harris were transported to the Christiana Hospital.

#### CONCLUSION

With respect to Delaware State Police Officer Trooper William Harris, Title 11, Section 464 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 is necessary to protect himself against death or serious physical injury. Under Delaware Law, it is the subjective state of mind of Trooper William Harris that is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Trooper Harris actually believed at the time 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 acquiring or failing to acquire any knowledge or belief which is material to justifiability of the use of force.

After a thorough investigation and review of all the statements, reports and other evidence described above, it is the conclusion of the Department of Justice that, as a matter of Delaware Law, Trooper William Harris' use of deadly force was justified in this case. At the time Trooper Harris fired his weapon, suspect Silvestre Fabian was armed with Trooper Harris' microphone and microphone cable and was using it as a weapon to bludgeon Trooper Harris, who already had his right arm disabled in the attack by Silvestre and was defending himself with only his left arm. Trooper Harris, retreating and repeating commands to Silvestre to stop, believed that the use of deadly force was immediately necessary to prevent serious injury or death to himself. Trooper Harris then fired one round. He saw no effect, and Silvestre's attack continued Trooper Harris fearing for his life, and fired a second round. Silvestre was struck in the upper shoulder but continued his attack. It was not until the intervention of other Troopers and the use of tasers that Silvestre's attack stoped. Investigation of the facts and circumstances of the shooting fully support the reasonableness of Trooper Harris belief and that it was not formed recklessly or negligently. As a result, Trooper Harris' use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware Law.