

REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

DELAWARE STATE POLICE SHOOTING

JUNE 11, 2008

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SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against Gary Lee Bliss by Troopers India Sturgis and Jason Vernon of the Delaware State Police on June 11, 2008. Special Investigator Robert Carmine conducted the investigation. 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 police officers 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, 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 Department 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 officers committed a crime when they used deadly force against Gary Lee Bliss. 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 June 11, 2008 at approximately 8:11 pm, Sussex Communication received a telephone call from Marguerite Bricker who stated that her husband, Gary Bliss was attempting suicide. She advised that he was cutting his wrists and was now in the shed at their residence. She further stated that he had tried this before and was intoxicated. She told the dispatcher there were no guns. Trooper Sturgis was dispatched at 8:14 pm. Trooper Vernon advised the dispatch that he would assist and was in route.

Both troopers arrived at the same time and pulled into the driveway of the location with Trooper Sturgis in front. They both heard a female's voice from inside the

house say "he's in the shed". After retrieving their flashlights they approached the shed and when Trooper Vernon shined his light into the shed a male subject (later identified as Gary Bliss) said in an "aggressive" manner laced with profanity "you better get away." Sturgis then heard Trooper Vernon say to the subject, "put the gun down." Vernon ordered the man to put the gun down several times but the only response was profanity and "back up and get away."

As Sturgis neared the shed she could now see the subject and then he pointed a gun at her. Mr. Bliss was standing in the doorway or threshold of the shed and Sturgis fired one shot and Mr. Bliss went back into the shed. Sturgis retreated and took cover behind a tree and saw that Trooper Vernon had taken cover around the corner of the house. They continued to yell for Mr. Bliss to put the gun down and he kept responding with profanity directed at the troopers. According to both troopers he came out of the shed rapidly, and aggressively toward Trooper Sturgis. He was holding a gun in his left hand and his left arm was extended in front of him. According to Sturgis, Mr. Bliss fired a shot at her striking the tree. She fired at Mr. Bliss several times. As Mr. Bliss was advancing on Sturgis and came abreast of Trooper Vernon, Vernon fired twice at him. The subject fell to the ground and the troopers began providing emergency treatment awaiting the ambulance which had been called. They were joined by another Trooper who assisted in the treatment. The weapon removed from Bliss was a Crossman 2210 CO2 pellet pistol, chrome in color and resembles a large caliber semi automatic handgun. It has a capacity to hold 7 pellets but there were only three in the weapon. An examination of the tree behind which Sturgis was taking cover revealed 4 defects (pellets shots). Although it cannot be absolutely determined when the pellets hit the tree it is supportive of Trooper Sturgis's statement that Bliss fired as he advanced toward her.

CONCLUSIONS

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, Trooper Sturgis's and Vernon's use of deadly force was justified in this case.

With respect to Trooper India Sturgis, 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 Trooper Sturgis that is of critical importance in determining whether her use of deadly force was justifiable in this case. The specific factual issue is whether Trooper Sturgis actually believed at the time that she intentionally fired her weapon that such action was necessary to protect herself 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 and other evidence described above, it is the conclusion of the Office of the Attorney General that, as a matter of Delaware Law, Trooper India Sturgis's use of deadly force was justified in this case. The first time Trooper Sturgis fired her weapon, Mr. Bliss was at the threshold of the shed and pointed a gun at her. After Mr. Bliss retreated into the shed, Trooper Sturgis, in an effort to put some distance between them moved to a safer position behind a tree in the yard. The second time Trooper Sturgis fired her weapon, Gary Bliss was quickly approaching her in an aggressive manner again pointing a gun at her which she believed to be a firearm. Trooper Sturgis believed that the use of deadly force was immediately necessary to prevent serious injury or death to herself. The investigation of the facts and circumstances of the shooting fully support the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Trooper Sturgis's use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware law.

With respect to Trooper Jason Vernon, 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 Trooper Vernon'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 Trooper Vernon actually believed at the time that he intentionally fired his weapon that such action was necessary to protect Trooper Sturgis from death or serious physical injury provided Trooper Vernon 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. At the time Trooper Vernon fired his weapon, Gary Bliss was advancing on Trooper Sturgis with what appeared to be a firearm in an aggressive and threatening manner. Trooper Vernon believed that the use of deadly force was immediately necessary to prevent serious injury or death to Trooper Sturgis. The investigation of the facts and circumstances fully support the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Trooper Vernon's use of deadly force was justified and is not subject to criminal prosecution under Delaware law.