

**REPORT OF THE DEPARTMENT OF JUSTICE
DOVER POLICE DEPARTMENT USE OF DEADLY FORCE**

**SUBJECT: Terrance Fletcher
OFFICER: PFC Ryan Schmid**

DATE OF INCIDENT: August 28, 2015

Dated: May 31, 2016

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 Patrolman First Class Ryan Schmid (“PFC Schmid”) of the Dover Police Department against Terrence Fletcher (“Mr. Fletcher”). Investigators from the Office of Civil Rights and Public Trust examined the crime scene and also reviewed evidence, reports written by officers who responded to the scene and witness interviews. Attorneys with the Office of Civil Rights and Public Trust reviewed the use of force for the Department of Justice.

Purpose of the Department of Justice Report

The Department of Justice determines whether a law enforcement officer’s use of deadly force constitutes a criminal act. The Department of Justice 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 Dover Police Department or whether, with the benefit of hindsight, the officer could have proceeded differently.

Facts

On August 28, 2015 at approximately 1:00 p.m. a detective with the Dover Police Department Drugs, Vice, and Organized Crime Unit received a phone call from a confidential informant (“CI”). The detective knew the CI and the CI had provided reliable information in the past. The CI advised the detective that a black male subject (later identified as Terrance Fletcher) had just left a residence in the area of Division and New Streets in Dover, Delaware. The CI overheard Mr. Fletcher talking and, based on what he overheard, the CI believed that Mr. Fletcher was armed with a gun.

The detective, who was off duty when he received the call from the CI, immediately forwarded the information to PFC Schmid and Master Corporal Turner (“M/Cpl. Turner”) of the Dover Police Department. PFC Schmid then contacted Senior Probation Officer Daniel Stagg (“PO Stagg”), who was also on patrol in the area. All three officers are members of Dover Police Department Safe Streets. All of the officers were dressed in black pants and black long sleeve shirts. The word “POLICE” was written in bold white letters across the front and back of the black tactical vests worn by PFC Schmid and M/Cpl. Turner. The word “PROBATION” was written in bold white letters across the back of PO Stagg’s black tactical vest. In addition, PO Stagg also wore a probation and patrol badge on his right shoulder issued by the Dover Police Department. Each officer also wore a fully equipped duty belt.

After receiving the information from the detective, the three officers began looking for the suspect identified by the CI. PFC Schmid and M/Cpl. Turner were partnered in one vehicle and PO Stagg was in another. After a short time, PFC Schmid informed the other officers over the radio that he thought he saw the suspect standing in front of a house in the 100 block of South New

Street. The three officers then developed a plan in which PO Stagg would attempt to approach the suspect in front of the property on South New Street, and PFC Schmid and M/Cpl. Turner would position themselves in the parking lot of 120 South Governors Avenue. Based on experience, the officers knew that there was a break in the chain link fence that ran along the parking lot located at 120 South Governors Avenue, and that suspects fleeing the area in which Mr. Fletcher had been observed would run through the alley between 111 and 115 South New Street, through the break in the fence, and into the parking lot to escape. As PO Stagg approached the property on South New Street in his vehicle¹, he observed the suspect walk from the alleyway on the east side of the street. Mr. Fletcher made eye contact with PO Stagg and fled east through the alley toward the parking lot. PO Stagg stopped his vehicle, got out of the car and gave chase on foot. The foot pursuit continued down the path between 111 and 115 South New Street. PO Stagg identified himself as a police officer and yelled for Mr. Fletcher to stop, but Mr. Fletcher kept running. As he was following Mr. Fletcher, PO Stagg observed Mr. Fletcher move his hands to his waistband in a manner which caused PO Stagg to believe that Mr. Fletcher was armed. PO Stagg, who was about twenty feet behind Mr. Fletcher, also shouted to Mr. Fletcher to drop the gun.² Mr. Fletcher continued to run and crossed from the rear yard of 115 South New Street, through the break in the chain link fence and into the parking lot of 120 South Governors Avenue. PO Stagg did not observe Mr. Fletcher throw anything before entering the parking lot through the break in the fence. When Mr. Fletcher entered the parking lot, PO Stagg heard shots, and he slowed his approach because he did not know who had fired the shots.

As planned, PFC Schmid and M/Cpl. Turner were on foot in the parking lot. M/Cpl. Turner was positioned next to the fence to the north and right of PFC Schmid. PFC Schmid was positioned just south of several vehicles parked perpendicular to the fence and deeper into the parking lot. Due to M/Cpl. Turner's position, he only observed Mr. Fletcher for a split second as he came through the break in the fence and then his line of sight was blocked by a parked vehicle. PFC Schmid fired two rounds from his department-issued Glock .40 caliber handgun, striking Mr. Fletcher once in his right thigh. PO Stagg approached through the opening in the fence, saw Mr. Fletcher on the ground, handcuffed him and started providing first aid. The call for shots fired was broadcast by officers at 1:18 p.m. Officers secured Mr. Fletcher without further incident and continued to render aid until paramedics arrived. Mr. Fletcher was transported to Bayhealth Kent General Hospital where he was treated for a non-life threatening gunshot wound to his right thigh.

As other officers arrived on the scene, PFC Schmid reported that he saw Mr. Fletcher with a gun, but that he had not been able to find the gun. Officers cordoned off the area from the crowd that was gathering and searched for the gun. During the canvass of the area, Mr. Fletcher's gun, a .38 caliber Rossi revolver, was recovered in a grassy area on the other side of the fence adjacent to the parking lot and just north of where Mr. Fletcher fell after he was shot. The barrel of the gun was partially lodged in the ground, consistent with the gun having been thrown as opposed to having been dropped.

¹ PO Stagg was driving an unmarked Impala.

² M/Cpl. Turner could not see either Mr. Fletcher or PO Stagg during the foot pursuit but heard PO Stagg yell to Mr. Fletcher to drop the gun.

During interviews, Mr. Fletcher said that he was standing outside of a residence on South New Street when a vehicle pulled up in front of the residence. Mr. Fletcher denied knowing that PO Stagg was a police officer but acknowledged that he took off down the alley and into the parking lot of 120 South Governors Avenue once PO Stagg pulled up in his vehicle. When he entered the parking lot, he heard one gunshot and realized that he had been shot. He did not see who fired the shot that struck him. He recalled hearing one of the officers stating, "He had a gun; he threw it." Mr. Fletcher initially denied having a gun but admitted during a later interview that he had a .38 caliber handgun, loaded with 5 rounds, and that he threw the gun. Mr. Fletcher pled guilty to Carrying a Concealed Deadly Weapon on December 16, 2015.

A number of witnesses were interviewed during the investigation. One witness was sitting in the parking lot in his car with the windows down waiting for a friend when the shooting occurred. He stated that when he heard the shots he could only see the officer and did not see Mr. Fletcher until after the shooting. He told investigators that he had seen Mr. Fletcher walk through the same break in the fence just a short time earlier as he sat in his car waiting for his friend. The witness stated that Mr. Fletcher "came out of nowhere" and that he believed the officer "didn't have [a] choice." The witness also stated that he did not hear any shouts of "shoot him" as reported by another witness³ and did not hear any of the officers say the shot was supposed to be a warning shot, as Mr. Fletcher stated.

None of the officers were wearing body cameras and neither PO Staggs' vehicle nor the Dover Police Department vehicle operated by PFC Schmid was equipped with in-car video. Videos obtained from the downtown Dover video camera system showed PO Stagg arriving at 111 South New Street and Mr. Fletcher running as described by PO Stagg. A video from a nearby business confirmed the officers meeting to discuss their plan of operation for confronting Mr. Fletcher. Citizen videos recorded the scene after the shooting occurred but no videos of the shooting were discovered during the investigation.

Conclusion

After a thorough investigation and review of all statements and reports, it is the conclusion of the Department of Justice that the State could not prove beyond a reasonable doubt that Dover Police Department PFC Ryan Schmid committed a crime when he used deadly force against Mr. Fletcher. 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

³ One witness stated that the white officer chasing Mr. Fletcher yelled, "He's coming your way, shoot him." That witness did not actually see the officer but said he knew he was white. Mr. Fletcher, however, stated that he heard the person chasing him say "I'm behind you, bud" and he realized the person was a police officer. Another witness stated that the black officer said, "Shoot him." Significantly, Mr. Fletcher did not say that the person chasing him or any of the officers said, "Shoot him."

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 PFC Schmid’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 PFC Schmid actually believed at the time that he intentionally fired his weapon that such action was necessary to protect himself or others from death or serious physical injury, so long as the officer was not reckless 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.

Officers were attempting to apprehend a suspect who was believed to be armed with a gun. PFC Schmid was positioned in the parking lot of 120 North Governors Avenue, and reported seeing Mr. Fletcher enter the parking lot with a gun. Mr. Fletcher acknowledged that he had a gun and threw it. He also confirmed that after he was shot he heard an officer say “he had a gun; he threw it.”

The investigation of the facts and circumstances found evidence that would support a defense of justification, if made by PFC Schmid, because he believed that his life and/or the lives of other officers were in danger, and that that belief was not formed recklessly. As a result, the use of deadly force by PFC Schmid is not subject to criminal prosecution.