

**FINAL REPORT OF THE DEPARTMENT OF JUSTICE  
USE OF DEADLY FORCE BY WILMINGTON POLICE DEPARTMENT**

**SUBJECT: Bruce A. Altenburger**

**OFFICERS: Master Corporal Michael Fossett**

**DATE OF INCIDENT: January 23, 2017**

**Dated: January 22, 2018**

## 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 Master Corporal Michael Fossett (hereinafter referred to as “Officer Fossett”) from the Wilmington Police Department (“WPD”) against Bruce A. Altenburger (referred to hereinafter as “Mr. Altenburger”). Investigators from the Office of Civil Rights and Public Trust examined the crime scene and reviewed evidence, including body camera footage, reports written by officers who responded to the scene and witness interviews. Attorneys with the Office of Civil Rights and Public Trust reviewed this use of force incident 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 involved officer’s actions complied with departmental policies or procedures concerning the use of force set by the WPD or whether with the benefit of hindsight, the officer could have proceeded differently.

## Facts

On Monday, January 23, 2017 at approximately 5:50 p.m., the Wilmington Communications Center dispatched WPD officers to a residence on 13<sup>th</sup> Street in Wilmington to respond to a report of a suicidal male subject armed with a gun.<sup>1</sup> A Master Corporal with the WPD (hereinafter “Officer 1”) was the first officer to arrive to the scene. Upon Officer 1’s arrival, he was advised by a female<sup>2</sup> (hereinafter “Witness 1”) standing outside of the residence that Mr. Altenburger was inside, armed with a handgun and talking to a male friend<sup>3</sup> (hereinafter “Witness

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<sup>1</sup> The first address initially reported to police was incorrect; however, police were quickly redirected to the correct location.

<sup>2</sup> Witness 1 was a friend and former co-worker of Mr. Altenburger’s. When interviewed, she stated that she texted Mr. Altenburger earlier in the day and he seemed fine. She stopped by to see him after work and he was “having words” with someone on the phone when he answered the door. She observed that he had been drinking and was staggering. Witness 2 arrived within a few minutes and they learned that Mr. Altenburger was on a call with an attorney who advised that the law firm would not be able to represent him in a personal matter due to a conflict of interest. Mr. Altenburger became angrier and angrier as he talked about the call. He removed his gun from his holster, cocked the weapon, began waving it around, pointing it at his head and stating that he “wanted to end it all.” At that point, Witness 1 became fearful and exited the residence and called her sister who told her to call the police. She returned to the residence and Witness 2, who had been trying to calm Mr. Altenburger, mouthed for her to call the 911. She then went back outside and called the police and waived them to the location when they arrived on scene.

Witness 1 heard officers giving commands for Mr. Altenburger to drop the gun and telling him that they did not want to hurt him. She also heard Mr. Altenburger telling the police to “back the f\*\*k” up.”

<sup>3</sup> Witness 2 was also the owner of the rental home where Mr. Altenburger was living. He and Mr. Altenburger were friends. Witness 2 knew that Mr. Altenburger was attending meetings and seeing a

2”). Officer 1 talked with the Witness 2 at the front door of the residence. Witness 2 informed Officer 1 that Mr. Altenburger was in the kitchen, intoxicated, and had a gun in his hands.

Once police arrived, Mr. Altenburger demanded to speak with Witness 2 who was brought back up on the porch of the residence to talk to Mr. Altenburger. Mr. Altenburger, who was still in the kitchen, became irate and accused his friend of calling the police. Officer 1 directed the friend to go back outside.

Officer 1 and three other officers entered the open front door of Mr. Altenburger’s residence with their guns drawn. All of the officers were in full uniform. One officer positioned himself on the landing of the steps leading from the first floor front room to the second floor.<sup>4</sup> The other officers were positioned near the entrance door. From his vantage point, Officer 1 observed Mr. Altenburger in the kitchen holding the gun to his head. He told Mr. Altenburger to move the gun away from his head and put it down so that they could talk. Mr. Altenburger refused to put the gun down but walked out of the kitchen into the front room still holding the gun to his head.

Mr. Altenburger became upset that the officers were inside of his home and began yelling for them to leave and moving the gun around.<sup>5</sup> Officers repeatedly commanded Mr. Altenburger to drop his weapon and told him they did not want to hurt him. Mr. Altenburger refused to cooperate and became increasingly irate when he observed the officer positioned on the steps inside of the house. Mr. Altenburger demanded that the officers exit his home. Officer 1 and a Corporal with the WPD (hereinafter “Officer 2”) agreed to remove two of the officers, but advised Mr. Altenburger that two of them had to stay for safety reasons. Officer 2 kept trying to talk to Mr.

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counselor related to his drinking and personal issues. He texted Mr. Altenburger almost daily to check on him. On the evening of January 22<sup>nd</sup> Mr. Altenburger called Witness 2. Witness 2 said that Mr. Altenburger was intoxicated and Witness 2 told him to get home. The following day, Mr. Altenburger did not show up for his regular racquetball game. Witness 2 began texting Mr. Altenburger to check on him. Mr. Altenburger finally responded in the afternoon on January 23<sup>rd</sup>, and texted that he was having a bad day and did not know if he was going to go to work. Witness 2 asked if he wanted to get together later in the day and Mr. Altenburger agreed. When he arrived at the residence, Witness 1 was already there. Mr. Altenburger was drinking liquor from two 16-ounce glasses, was crying and had a gun. Mr. Altenburger told his friend that he could not do it anymore and put the gun to his head. At that point, Witness 1 exited the residence. Witness 2 was aware that Mr. Altenburger had threatened to kill himself before and tried to talk him down, suggesting that he talk to his counselor who he was scheduled to see the next day. When Witness 1 returned to the residence, Witness 2 silently told her to call 911 and she went back outside while he attempted to keep Mr. Altenburger talking until somebody got there. After about 10 minutes, Mr. Altenburger wanted to know where the Witness 1 was and stated that “she better not be calling 911.” Mr. Altenburger kept taking his gun out, taking the clip out, and cocking it. He also attempted to load a bullet that fell out which made him more distraught. He then demanded that Witness 1 go and get Witness 2. Within seconds of Witness 2 stepping outside of the house, the police arrived. Witness 2 informed the police that Mr. Altenburger was in the kitchen with a loaded gun and was drunk. Mr. Altenburger was screaming at Witness 2 because the police had arrived. Witness 2 heard the police telling Mr. Altenburger to “drop the gun” and “not to do this.” He also observed Mr. Altenburger coming toward the police with the gun to his head as they were backing away. At that point, he moved away from the window and then heard shots.

<sup>4</sup> The front room is a combined dining/living area.

<sup>5</sup> Officers stated that Mr. Altenburger was “lasering” his weapon. Lasering is a term used to describe the act of moving a gun around and pointing it at various things but not fixating on a particular target.

Altenburger and told him they could continue to talk as long as one other officer stayed. He told Mr. Altenburger that he would talk to him all night if he would put the gun down. Mr. Altenburger pointed at Officer 1 and stated that he wanted him to leave. To allow the other two officers to safely leave the house, Officer 2 requested that Mr. Altenburger go back into the kitchen. Mr. Altenburger moved back far enough that the officer on the steps and the other officer were able to safely exit the house.

Mr. Altenburger returned to the front room and began moving his gun around. Officer 1 attempted to personalize his dialogue with Mr. Altenburger calling him by his first name "Bruce;" however, that appeared to make Mr. Altenburger even more agitated with Officer 1. Mr. Altenburger yelled at the officers to "back the f\*\*k out," "back the f\*\*k up" and to "shut up." When Mr. Altenburger alternately pointed the gun at his head and the floor, Officer 2 told Mr. Altenburger not to point the gun at them. Mr. Altenburger asked "why, are you going to shoot me?" to which Officer 2 replied that no one wanted to shoot him but if he pointed the gun at them, they would have to use force for their safety.<sup>6</sup>

Officer 2 continued to try to talk with Mr. Altenburger to get him to put his gun down while Officer 1 began to back out of the front doorway. Officer 1 signaled to Officer Fossett, who had been standing on the porch of the home next door, to take his place.<sup>7</sup> As Officer 1 attempted to leave the residence, Mr. Altenburger moved within approximately 3 feet of Officer 2 and Officer 1 and attempted to close the front door. Officer 1 placed his foot in the door preventing the door from closing to make sure that Officer 2 was not left alone in the house with Mr. Altenburger. As they switched places, Officer 1 told Officer Fossett not to let the door close.

Once Officer Fossett and Officer 1 switched places, Officer Fossett crossed the threshold of the doorway and Mr. Altenburger told him to "back up." Officer 2 was inside the house to the left of the doorway trying to get Mr. Altenburger to drop the gun. Officer Fossett attempted to talk to Mr. Altenburger asking him to put the gun down. Mr. Altenburger moved the gun from his head down to the floor and stated that he did not need to put the gun down because he was in his house. At that point, Officer Fossett told Mr. Altenburger to stop waving his gun around. Mr. Altenburger ignored Officer Fossett's commands and moved the gun back up to his head and stated "the gun is right here, it's not going anywhere." He then pointed the gun in the air, removed his left hand from his pocket, reached up with his left hand placing it on the slide of the gun and pointed the muzzle downward in Officer Fossett's direction. Officer Fossett fired two rounds from his department issued weapon striking Mr. Altenburger.<sup>8</sup> An officer called in the departmental shooting at approximately 6:03 p.m. and requested an ambulance.

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<sup>6</sup> Officer 2 stated that Mr. Altenburger responded that he did not want to "hurt any of you guys" and told him "I won't point the gun at you."

<sup>7</sup> Officer Fossett arrived at the scene after the other officers were in place on the porch of Mr. Altenburger's home. Officer Fossett positioned himself on the porch of the neighboring house with a view of Mr. Altenburger's open doorway where observed Mr. Altenburger moving around and pointing the gun at his head. Before switching positions with Officer 1, Officer Fossett also told Mr. Altenburger that no one wanted to shoot him, but they could not leave.

<sup>8</sup> Officer Fossett later stated that the angle of the gun was getting to the point that if Mr. Altenburger were to make the decision to shoot him, he would not have time to prevent him from firing.

Officers cleared the residence to make sure no one else was inside of the house and immediately rendered aid to Mr. Altenburger until emergency medical personnel arrived and transferred him by ambulance to the Christiana Hospital for treatment. Mr. Altenburger was pronounced dead at 7:05 p.m.

Mr. Altenburger's gun, a black 9 mm Glock Model 17 firearm with 10 bullets in the magazine, was recovered from the scene.

### 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 WPD Officer Michael Fossett was not a criminal act because the use of such force against Mr. Altenburger 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, Officer Fossett's subjective state of mind is of critical importance in determining whether his use of force was justifiable. The specific factual inquiry is two-pronged. The first question is whether Officer Fossett actually believed, at the time he intentionally fired his weapon, that such action was necessary to protect himself or others from death or serious physical injury. The second question is whether Officer Fossett was 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. 11 *Del. C.* § 470(a).

Officers were dispatched to a call of a suicidal subject armed with a gun. Officers repeatedly commanded Mr. Altenburger to drop his weapon which he refused to do. Officers attempted to negotiate with Mr. Altenburger as he alternated between pointing the gun at his head and waiving it around. They attempted to de-escalate the situation by removing officers from inside the home and by switching Officer 1 and Officer Fossett. Once Officer Fossett switched places with Officer 1, Mr. Altenburger placed his left hand on the slide of the gun and moved the gun in

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Officer 2 stated that – although he was ready to react if Mr. Altenburger did point the gun at him – he did not fire because the gun was not pointed directly at him and Mr. Altenburger had told him he would not shoot him [information that Officer Fossett did not have]. However, Officer 2 did believe, despite the comment to him, that Officer Fossett was in danger when Mr. Altenburger pointed the muzzle of the gun in Officer Fossett's direction.

Officer Fossett's direction so that the muzzle was pointed at Officer Fossett. Officer Fossett provided a voluntary statement in which he said that he discharged his weapon because he was in fear for his life as Mr. Altenburger pointed the gun in his direction.

The investigation of the facts and circumstances fully support the reasonableness of Officer Fossett's belief that his life was in danger. That belief was not formed recklessly or negligently. As a result, the use of deadly force was justified and therefore not subject to criminal prosecution.