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October 7, 2014

Chief E. Keith Hudson
Milford Police Department
400 NE Front Street
Milford, DE 19963

RE: Use of Deadly Force – Sergeant Robert S. Young – Milford PD
December 14, 2013

Dear Chief Hudson:

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Sergeant Robert S. Young. As a result, Sergeant Young's 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 F. Mullaney Sr.
Deputy Attorney General

tpm
Enclosure

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

SUBJECT: Roy D. Rhodes

OFFICER: Sgt. Robert S. Young

December 14, 2013

By: Timothy P. Mullaney Sr.
Deputy Attorney General
October 7, 2014

A handwritten signature in black ink, appearing to read 'T. Mullaney', is written over the printed name of Timothy P. Mullaney Sr. The signature is enclosed in a hand-drawn oval.

Scope of the Investigation

This is the final report of the Delaware Department of Justice on the investigation of Sergeant Robert S. Young (Sgt. Young) of the Milford Police Department use of force against Roy D. Rhodes (Mr. Rhodes). Special Investigator Allen Ruth conducted the investigation. Deputy Attorney General Timothy P. Mullaney Sr. supervised the investigation and reviewed the use of force for the Department of Justice. Investigators examined the actual 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 Milford Police Department 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 Milford Police Department. The sole purpose of the Department of Justice's investigation of the use of deadly force is to determine whether the officer committed a crime when he used deadly force against Mr. Rhodes. One of the issues that must be considered in any law enforcement officer involved shooting is whether the use of deadly force by a law enforcement officer was justified under all the circumstances.

The Facts

On December 14, 2013 at approximately 1845 hours, Special Investigator Allen Ruth was contacted by Director Tom Penozza of the Special Investigations Unit of the Department of Justice to respond to Milford Police Department for a police use of deadly force incident. Based upon Special Investigator Ruth's investigation the following facts were confirmed.

On December 14, 2013 between 1540 hours and 1600 hours witnesses reported that a 1998 Lincoln Town Car was traveling at a high rate of speed in an erratic manner. The vehicle traveling westbound on Route 14, (aka Milford Harrington Highway) crossed over the eastbound lane of Route 14 and struck a tree. Several witnesses stopped the vehicle from leaving by taking the car keys. The driver was eventually identified as being Mr. Rhodes. At approximately 1540 hours Sgt Young was dispatched to what he

believed to be an accident involving an intoxicated subject on Route 14, just west of Milford. Just prior to arriving at the accident scene, Sgt. Young was further advised the suspect was armed with a gun. Upon arrival at the scene, Sgt. Young observed several individuals running from the vicinity of Mr. Rhodes vehicle. Sgt. Young stopped short of Mr. Rhodes vehicle, a 1998 Lincoln Town Car, exited the vehicle and retrieved his patrol rifle. Sgt. Young positioned himself at the rear of his marked unit and shouted several times to Mr. Rhodes to "show me your hands". Mr. Rhodes, who was in the front seat, crawled into the back seat of the vehicle. Mr. Rhodes then exited his vehicle through the passenger side rear door with the handgun in clear view. According to Sgt. Young, Mr. Rhodes was focused on several subjects in a parking lot across the road from him. Sgt. Young ordered Mr. Rhodes to drop his weapon. Mr. Rhodes turned towards Sgt. Young and raised his handgun in Sgt. Young's direction. Sgt. Young fearing for his life, fired several rounds from his patrol rifle at Mr. Rhodes. At the time of the use of force, there were several other officers at the scene, who witnessed the shooting. Mr. Rhodes was transported to Milford Memorial Hospital, where he passed away on December 16, 2013 at approximately 1832 hours.

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, Milford Police Sergeant Robert S. Young's use of deadly force 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".

Under Delaware Law, it is Sgt. Young's subjective state of mind which is of critical importance in determining whether his use of force was justifiable. The specific factual issue is whether Sgt. Young actually believed at the time he intentionally fired his weapon that such action was necessary to protect himself from death or serious physical injury, so long as he 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.

Prior to firing his weapon, Sgt. Young had ordered Mr. Rhodes to drop his weapon. Mr. Rhodes then raised his weapon and pointed it at Sgt. Young, at which time Sgt. Young fearing for his life, discharged his firearm striking Mr. Rhodes. The investigation of the facts and circumstances fully support the reasonableness that Sgt. Young felt his life was in danger. That belief was not formed recklessly or negligently. As a result, Sgt. Young's use of deadly force was justified and is not subject to criminal prosecution.