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November 23, 2010

Paul M. Tiernan, Chief
Newark Police Department
220 Elkton Road
Newark, DE 19711

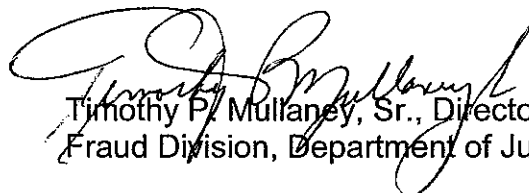
RE: AG Case # 17-10-01-0051, Police Use of Deadly Force Investigation
Corporal Thomas Maiura
Date of Incident – January 26, 2010

Dear Chief Tiernan,

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Corporal Thomas Maiura on January 26, 2010. As a result, the officer'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 concerns or questions.

Sincerely,


Timothy P. Mullane, Sr., Director
Fraud Division, Department of Justice

TPM/mam
Enclosure

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

SUBJECT: DeWayne E. Lowery

OFFICER: Corporal Thomas G. Maiura

January 26, 2010

By: Timothy P. Mullaney Sr.
Deputy Attorney General



Date: November 10, 2010

Scope of the Investigation

This is the final report of the Delaware Department of Justice on the investigation of Corporal Thomas G. Maiura of the Newark Police use of deadly force against DeWayne E. Lowery. Special Investigator Curtis Clifton of the Special Investigations Unit conducted the investigation. Deputy Attorney General Timothy P. Mullaney Sr. supervised the investigation and review of the use of force for the Department of Justice. Statements were taken from both police officers and civilian witnesses who were at the scene. 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 the departmental policies or procedures concerning the use of force set by the Newark Police (NPD) or whether, with the benefit of hindsight, the officers could have proceeded differently. This is a matter of a separate internal investigation to be undertaken by the Newark Police. The only purpose of the Department of Justice's investigation of this shooting is to determine whether the officer committed a crime when he used deadly force against Mr. Lowery. One of the issues that must be considered in any intentional shooting is whether the use of deadly force by a law enforcement officer was justified under all of the circumstances.

The Facts

On Tuesday, January 26, 2010 at 1627 hours, Newark Police Dispatch Center (NEWCOM) dispatched officers to College Square Shopping Center for a robbery complaint (forcible purse snatch) which had just occurred. Witnesses at the scene had gotten a description of the getaway vehicle and a tag number. A witness had followed the vehicle but lost it in traffic. Subsequently, this same witness spotted the suspect vehicle still in traffic in the area of Routes 4 and 72. The witness contacted NEWCOM and advised the suspect vehicle was in the parking lot of the Boston Market on South College Avenue in Newark.

Corporal Thomas Maiura (Maiura) was the first unit to arrive at Boston Market, where he observed the suspect vehicle parked at the rear of the building, which was

occupied by a white male subject, later identified as DeWayne Lowery (Lowery). Maiura parked his marked patrol unit behind the suspect vehicle to provide cover for himself. As Maiura was exiting the patrol vehicle, Lowery fled from the suspect vehicle towards the front of the building. Maiura then went around the opposite side of the building to cut off Lowery's escape route, since he knew additional officers would be in the front of the building. Instead Lowery doubled back and got back into the suspect vehicle and started to leave the parking area. Maiura had started back towards his patrol vehicle when he observed Lowery in the suspect vehicle driving very fast towards him. The paved area on the rear side of the building is narrow. Maiura had drawn his departmental issued service weapon upon when he exited his vehicle. As the suspect vehicle was bearing down on Maiura's position, Maiura threw up his left hand indicating he wanted the suspect vehicle to stop. Maiura felt the suspect vehicle was headed at him too quickly for verbal commands to be effective. Maiura advised that Lowery veered the suspect vehicle at him deliberately. Maiura advised that he was afraid of being killed due to the speed and the path of travel of suspect vehicle. As Maiura moved to his right in an attempt to get out of the path of the suspect vehicle, Maiura fired one round at the suspect vehicle's windshield. Maiura then fell over the curbing into the flower bed at the rear of the business, while the suspect vehicle went by him and fled the scene.

Suspect vehicle fled Delaware and subsequently crashed into a tree in Maryland. Lowery fled the crash scene sliding down an embankment into the river. Lowery stayed in the water overnight. The next day, January 27, 2010, he climbed up the embankment and went to a nearby residence. He asked the occupants of the residence to call a cab to pick him up. Instead they called the police and Lowery was taken into custody by the Cecil County Sheriff's Department at 1646 hours. Lowery was treated and released at Union Hospital in Elkton, Maryland for the injuries that he received in the car accident. There was no indication of any gunshot injury to Lowery nor was there any mention of a gunshot wound to hospital personnel. Lowery wasn't sure if the one round grazed him but did say he was sure it hit and put a hole in the windshield. Lowery referred to a very small scrape on his scalp as possible being where the round struck him but admits he is not certain. It is possible that the injury could have been caused by the four inch tree limb that totally penetrated the front windshield of the suspect vehicle or the broken glass from the accident itself. Lowery during the interview stated that the officer probably shot because he was driving towards him and thought he was going to strike him. Lowery advised that he thought he veered away from the officer but was high on crack at the time.

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, Newark Police Officer Thomas Maiura'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 Officer Maiura'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 Officer Maiura actually believed at the time that he intentionally fired his weapon that such action was necessary to protect himself from death or serious physical injury, so long as this 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.

At the time Maiura fired his weapon, Lowery, who was a robbery suspect and fled the scene of said robbery, had driven his vehicle directly at Maiura in a threatening manner. Maiura believed he was in immediate danger and that the use of deadly force was immediately necessary to prevent serious injury or death to himself. 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, Maiura's use of deadly force was justified and is not subject to criminal prosecution under Delaware Law.