

**FINAL REPORT OF THE DEPARTMENT OF JUSTICE  
USE OF DEADLY FORCE BY OCEAN VIEW POLICE DEPARTMENT AND  
WORCESTER COUNTY SHERIFF'S OFFICE**

**SUBJECT: Troy L. Short**

**OFFICERS: Officer Nicholas Harrington  
Deputy Anthony Rhode**

**DATE OF INCIDENT: March 18, 2017**

**Dated: December 11, 2017**

## 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 Officer Nicholas Harrington from the Ocean View Police Department and Deputy Anthony Rhode from the Worcester County Sheriff's Office against Troy L. Short (referred to hereinafter as "Mr. Short"). Investigators from the Office of Civil Rights and Public Trust examined the crime scene and reviewed evidence, including dash camera and 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 officers' actions complied with departmental policies or procedures concerning the use of force set by their respective police departments, or whether with the benefit of hindsight, the officers could have proceeded differently.

## Facts

On Saturday, March 18, 2017 at approximately 8:10 p.m., Deputy Anthony Rhode of the Worcester County Sheriff's Office ("WCSO") was working a DUI traffic initiative in Worcester County, Maryland. Deputy Rhode was in full uniform and driving a fully marked patrol vehicle. While patrolling in Ocean City on Baltimore Avenue approaching 6<sup>th</sup> Street, Deputy Rhode observed a green GMC pick-up truck with Delaware tags making a left turn and observed that the driver was not wearing a seatbelt and that both side mirrors were missing from the truck. Deputy Rhode pulled up behind the truck and dispatched the license plate to WCSO as they waited for the light to turn green. When the light changed, Deputy Rhode followed the truck as it turned left and then activated his emergency equipment signaling the driver to stop. The driver – later identified as Mr. Short – did not comply and engaged the Deputy in a vehicle pursuit at speeds approaching 70 mph in an area posted at 35 mph. The pursuit continued over the Harry Keller-Bridge into heavier traffic with Mr. Short driving in both the east and west bound lanes forcing other cars to move out of his way. Deputy Rhode followed as Mr. Short drove on the shoulder and headed westbound out of town on Route 50. Mr. Short ran one red light at approximately 80 mph. Deputy Rhode slowed for cross traffic then continued the pursuit. Mr. Short ran through a second red light at the intersection of Route 611. Deputy Rhode lost sight of Mr. Short several minutes into the pursuit after he became stuck in traffic.

Other patrol units began to travel eastbound in search of Mr. Short as Deputy Rhode continued to travel westbound in an attempt to catch up to Mr. Short. One of the units reported observing Mr. Short travelling westbound with his lights off. Deputy Rhode eventually caught up

with Mr. Short just east of Route 589 but Mr. Short eluded the deputy by driving through the intersection and turning off of the highway into a field at a speed of about 40 mph. Deputy Rhode stopped and attempted to locate Mr. Short using his spotlight. He then coordinated with other police units to come up with a plan to stop Mr. Short at Gray's Corner Road. As Deputy Rhode cut through a parking lot to get to Gray's Corner Road, one of the WCSO units mistakenly reported that they had observed Mr. Short's vehicle. Once that information was corrected, Deputy Rhode headed back toward Gray's Corner Road. After determining that the field was too muddy to drive through, Deputy Rhode drove back to Griffin Road to get to the other side of the field and was met by Maryland State Troopers who had already located Mr. Short's tire path leading them to where the green pickup truck had been crashed and abandoned in a ravine. Officers were using a K9 track to locate Mr. Short when, at approximately 8:28 p.m., police received a call reporting a burglary in progress at a residence in Berlin, Maryland in close proximity to the abandoned pickup truck.<sup>1</sup>

While officers were in route to the reported burglary, dispatch received a 911 call that a gold/tan Chevrolet Blazer had been stolen from a residence that backed into the same subdivision where they were headed for the reported burglary.<sup>2</sup> At approximately 8:34 p.m., the Chevrolet Blazer was found abandoned in Berlin, Maryland. Officers initiated a K9 track that was under way when, at approximately 9:21 p.m., dispatch received a report of another stolen vehicle – a 2002 black Chevrolet Silverado pickup truck.<sup>3</sup> Deputy Rhode, who remained with the green pickup as it was towed from the ravine where it was found, rejoined the pursuit travelling on Route 113 toward Berlin, Maryland. A Maryland State Trooper reported locating the black Chevrolet Silverado abandoned on Saint Martin's Neck Road in Bishopville, Maryland. The truck was stuck deeply in the mud and had damage to the passenger side front tire and bumper area.

Deputy Rhode and other police units proceeded to the area of Saint Martin's Neck Road and Vista Way. At the scene, officers used thermal and night vision devices along with a K9 track in an attempt to locate Mr. Short. About a mile into the K9 track, officers observed a black SUV driving at a high rate of speed leaving the area of Vista Way. The driver was a white male with a dark colored hoodie pulled over his head and was slouched down in the driver's seat. Officers used their flashlights in an attempt to make contact with Mr. Short to get him to stop but he refused. Deputy Rhode was able to identify the driver as their suspect after closely observing his physical features as he drove past them. Within minutes, dispatch advised officers they had received a 911 call reporting a burglary and the theft of a black Infiniti QX56 SUV from a residence in Bishopville, Maryland.<sup>4</sup>

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<sup>1</sup> The caller, a Natural Resource Police Officer, reported a burglary in progress at his home. Mr. Short ran up to the back door of the officer's house and started shaking the door in an attempt to break in. When Mr. Short was unable to gain access, he ran through the back yard.

<sup>2</sup> The caller described the suspect as a white male, approximately 25-30 years old, wearing jeans and a hooded sweatshirt. Mr. Short attempted to enter the caller's back door by pulling on the door handle. When the caller went to the door to see what was happening, Mr. Short ran from the back door and screamed that he was sick and needed help and tried kicking the caller's garage door. The caller advised that Mr. Short was covered in sweat, going "crazy" looked "dope sick" – like someone on methamphetamine. The caller stated that by the time he called the police, Mr. Short had driven off with the Chevrolet Blazer.

<sup>3</sup> The owner was in his garage when he heard the diesel engine of his truck start up. The owner did not see the suspect or the direction in which he fled.

<sup>4</sup> The caller was in her master bathroom when she heard footsteps of someone in her bedroom and walking into her closet. The person was breathing heavily. She called out that she was in the bathroom, assuming the person was a

Deputy Rhode and other patrol units signaled a Maryland State Trooper who had approached the area to stop Mr. Short. The Trooper activated his emergency lights and siren and attempted to stop Mr. Short who evaded him and continued on at a high rate of speed. A WCSO deputy deployed stop sticks just north of their location on Saint Martin's Neck Road in an attempt to deflate the vehicle's tires but Mr. Short was able to veer off onto the shoulder and ditch area striking a sign but avoiding the stop sticks. The two patrol vehicles immediately following Mr. Short were unable to avoid the stop sticks and sustained deflated tires.

Deputy Rhode and other officers continued on Route 54 in pursuit of Mr. Short. As they got into Selbyville, Delaware, Deputy Rhode went around some of the other officers and got on Route 113 parallel to Peppermill Road. At that time, a Natural Resource Police officer called dispatch and reported that Mr. Short had attempted to back into him and run him off of Peppermill Road. The Natural Resource Police officer reported that he was losing sight of the vehicle. Deputy Rhode travelled up 113 to just South of Frankford, Delaware and turned right, headed to Peppermill Road. By this time, the dispatcher had the Infiniti's location through the GPS and called out the direction the Infiniti was travelling. As Deputy Rhode turned onto Main Street in Frankford, he saw the Infiniti parked between two cars in a driveway. Deputy Rhode advised dispatch that he had the vehicle and then approached from the rear. Mr. Short was slumped completely over toward the passenger side with his hands still on the wheel. Deputy Rhode had his gun on the subject and was waiting for backup when Mr. Short woke up and looked over at the flashing blue lights of Deputy Rhode's vehicle. Mr. Short appeared groggy as he attempted to start the car. Deputy Rhode yelled "don't do it" and then took out his baton and attempted to smash the driver's side window. At about the third strike of the window, Mr. Short was able to place the car in drive, took off at the end of the driveway, jumping a curb, traveling through bushes and a front yard and fled on Route 26.

Deputy Rhode got back into his car and notified the dispatchers that he had Mr. Short's car in sight and was in pursuit; he then took the lead position with other units behind him. As they got out of the populated areas, the pursuit reached speeds of 75 to 80 mph. Mr. Short crossed the double yellow line narrowly missing a head on collision and forcing two cars off of the road. Deputy Rhode called out the cross streets as he pursued Mr. Short into a dead end development where Mr. Short hit a curb and drove through a yard and over ditches until he was back on the main road. As Mr. Short entered the main road, Officer Harrington pulled into the lead position directly behind Mr. Short. Officer Harrington was familiar with the area and advised SUSCOM<sup>5</sup> that Mr. Short was driving into a dead end on Pine Grove Lane in Ocean View. As Mr. Short approached the dead end wooded cul-de-sac, Officer Harrington stated that Mr. Short "brake checked" him, put the Infiniti in reverse and accelerated the vehicle into Officer Harrington's patrol car causing the air bags to deploy and significantly damaging the front end of the patrol car.<sup>6</sup>

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relative. She heard footsteps leaving, and seconds later, heard her car start up. She looked out the window to see the car being driven away. She called out to her husband and immediately called 911 to report the stolen vehicle. The caller's purse was stolen from her home which contained the keyless fob for her car. A kitchen knife that was later determined to have been removed from the home was found in the Infiniti.

<sup>5</sup> Sussex County Communications.

<sup>6</sup> At approximately 10:33 p.m., Officer Harrington reported to dispatch that he was going to hit Mr. Short's vehicle. After the collision, he attempted to open the driver side door but was unsuccessful because the side and front airbags had deployed so he exited through the passenger side. The dash camera in Officer Harrington's vehicle was destroyed and the video could not be retrieved; however, the collision was captured on Deputy Rhode's dash camera.

Mr. Short continued backing his vehicle in reverse straight toward Deputy Rhode's vehicle. After narrowly missing Deputy Rhode's vehicle, Mr. Short struck a mailbox and continued driving into an empty lot on the south side of the road.

As Deputy Rhode turned his vehicle to check on Officer Harrington to make sure he was okay, he saw Officer Harrington "dive" out of the passenger side of his vehicle. Once he saw that Officer Harrington was out of the damaged vehicle, Deputy Rhode placed his patrol car into reverse, backed out, turned around, and started heading toward the empty lot after Mr. Short. As Deputy Rhode approached Mr. Short's vehicle in the empty lot, he saw the driver's side door open. Deputy Rhode placed his car in park and jumped out anticipating that Mr. Short was going to engage in a foot pursuit. By the time Deputy Rhode got out of his vehicle, Mr. Short got back into the Infiniti, placed the car in drive, made a U-turn, and drove directly toward Deputy Rhode and Officer Harrington who had run to assist Deputy Rhode.

Deputy Rhode stated that he was standing in the driveway to the lot with nothing to his right and trees about 10-12 feet to his left. Deputy Rhode attempted to move left, but stated that Mr. Short continued to track him and Officer Harrington with his headlights. He had his gun drawn and yelled "stop," but Mr. Short continued to drive straight toward Deputy Rhode who recalled seeing the Infiniti symbol and headlights coming at him just prior to discharging his weapon. Deputy Rhode reported hearing rounds fired over his left shoulder but he did not know where Officer Harrington was located. Officer Harrington, who was behind and just to the left of Deputy Rhode, also stated that he had no escape route and discharged his weapon in the direction of the windshield in an attempt to hit the suspect. As both officers fired rounds from their department issued weapons, the car quickly started to veer away from them. Deputy Rhode stated that he stopped firing once the passenger side door passed by him. Officer Harrington reported that he stopped shooting because Deputy Rhode had entered his line of fire. The Infiniti travelled through a ditch, and up into the front yard of a house on Pine Grove Lane before coming to a stop. At approximately 10:34 p.m., Deputy Rhode notified SUSCOM that shots had been fired. Once the vehicle was in a resting position, the officers scanned the area for cover, switched the magazines in their firearms and then approached the vehicle.

The officers were able to see Mr. Short inside the vehicle as they approached. Officer Harrington approached the passenger side of the vehicle and provided verbal commands of "let me see your hands." Mr. Short did not respond. The officers used their batons to break the vehicle's windows to unlock the doors to gain access to Mr. Short. The officers advised dispatch to send paramedics because Mr. Short had suffered a gunshot wound to the head.<sup>7</sup> The officers determined that Mr. Short was still alive, turned off the vehicle and pulled Mr. Short out of the vehicle through the driver's side door. They initially placed Mr. Short on his back but moved him to his side to prevent him from choking on his blood.

Other police units arrived and began rendering aid to Short until the ambulance arrived. The Ocean View Officer was also treated for minor injuries related to the vehicle crash.

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<sup>7</sup> Mr. Short was critically injured but survived the shooting. Toxicology reports confirmed the presence of multiple drugs in Mr. Short's system.

## 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 Ocean View Officer Nicholas Harrington and Worcester County Deputy Anthony Rhode was not a criminal act because the use of such force against Mr. Short 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 Harrington’s and Deputy Rhode’s subjective state of mind is of critical importance in determining whether their use of force was justifiable. The specific factual inquiry is two-pronged. The first question is whether the officers actually believed, at the time they intentionally fired their weapons, that such action was necessary to protect themselves or others from death or serious physical injury. The second question is whether the officers were 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).

Multiple officers were attempting to apprehend a suspect who was wanted after he fled an attempted traffic stop in Ocean City. Mr. Short lead officers on a two-hour chase that started in Maryland and ended in Delaware. While fleeing the police, Mr. Short stole three vehicles, burglarized one residence and attempted to enter at least 2 other residences. Mr. Short drove erratically at high speeds, crossing double lines and forcing cars out of his way. Before Mr. Short rammed the stolen Infiniti into the marked patrol car driven by Officer Harrington, he had already attempted to reverse his vehicle into a pursuing NRP officer’s vehicle. He then narrowly missed striking the marked patrol vehicle driven by Deputy Rhode. As the officers approached Mr. Short on foot commanding him to stop, he accelerated the Infiniti directly at the officers tracking them with his headlights. Ballistic evidence confirmed shots struck the front and passenger side of the vehicle, corroborating the officers’ statements that Mr. Short was driving toward them when they discharged their weapons.<sup>8</sup>

Officer Harrington provided a voluntary statement in which he said that he discharged his weapon because he was in fear for his life and the life of Deputy Rhode as Mr. Short drove the Infiniti toward them. Deputy Rhode also provided a voluntary statement in which stated that he was in fear for his life and thought he was going to be run over and killed by Mr. Short.

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<sup>8</sup> Although neighbors reported hearing popping sounds, there were no eyewitnesses to the actual shooting. One of the neighbors heard sirens and saw the lights when she looked out of her window. She stated that it looked like a vehicle was trying to go through an open lot. She then heard gunshots.

The investigation of the facts and circumstances fully support the reasonableness of the Officer Harrington's and Deputy Rhode's belief that their lives and the lives of each other were 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.