

**REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE STATE POLICE USE OF DEADLY FORCE**

SUBJECT: Raymond A. Hutson

OFFICER: Tpr. Thomas Macauley

DATE OF INCIDENT: June 28, 2016

Dated: March 15, 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 a Delaware State Police Trooper Thomas Macauley (“Tpr. Macauley”) against Raymond A. Hutson (“Mr. Hutson”). 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 Delaware State Police Department or whether, with the benefit of hindsight, the officer could have proceeded differently.

Facts

On June 27, 2016, Mr. Hutson was operating a red Ford pick-up truck that had been reported stolen. He was observed operating this vehicle near Greensboro, Maryland by Caroline County Sherriff’s Deputy John LaBelle (“Deputy LaBelle”). Mr. Hutson was also wanted on a felony warrant from Delaware for a prior motor vehicle pursuit and from Maryland for offenses connected to the theft of the vehicle and firearms. Deputy LaBelle attempted to perform a vehicle stop but Mr. Hutson failed to comply. Deputy LaBelle began pursuing Mr. Hutson. Mr. Hutson drove eastbound on Willow Grove Road into Delaware. Deputy LaBelle maintained his pursuit and Caroline County dispatch contacted the Delaware State Police 911 call center to advise the Delaware State Police of the pursuit and to request assistance.

The pursuit continued east through Felton on Sandtown Road and then through Frederica. East of Frederica Mr. Hutson turned his vehicle northbound into the southbound lanes of State Route 1. Shortly after midnight, due to the danger to the public, the State Police made a decision to terminate the pursuit. Almost simultaneously, Mr. Hutson pulled his vehicle to the west shoulder of the roadway. Police vehicles took positions south of Mr. Hutson’s vehicle, illuminated the vehicle, and recorded the subsequent events on dash-mounted cameras.

A DSP trooper parked his fully-marked police vehicle almost directly parallel to the passenger side window of Mr. Hutson’s vehicle. While Tpr. Macauley was en route to assist, he heard transmissions indicating that the subject had a gun. When Tpr. Macauley arrived on the scene, he parked his vehicle to the south of the other DSP vehicles and exited with his divisionally issued patrol rifle. He then took a covered position behind the passenger side front quarter panel

of the police vehicle parallel to Mr. Hutson's vehicle. Another DSP trooper took a position on Tpr. Macauley's right. Other officers were also in the vicinity of the police vehicle.

Mr. Hutson remained seated in the driver's seat holding what appeared to be a handgun in his left hand. The police on the scene issued a number of verbal commands to Mr. Hutson directing him to put the gun down and encouraging him to resolve the situation. Mr. Hutson continued to point the gun at his head, which also pointed the gun in the direction of Tpr. Macauley and the other officers who were parallel to Mr. Hutson's vehicle.

Tpr. Macauley illuminated the interior of Mr. Hutson's vehicle with the tactical light on his rifle. Tpr. Macauley saw Mr. Hutson attempt to exit the vehicle without success. He then saw Mr. Hutson start to turn his body towards the officers. Tpr. Macauley, in a later interview, stated he believed his life and the lives of the other officers with him were directly threatened by Mr. Hutson's continued non-compliance with verbal commands and his turning in their direction holding what appeared to be a handgun. Tpr. Macauley fired one round from his weapon, striking Mr. Hutson in the right side of his head. Mr. Hutson collapsed in the driver's seat of the vehicle and the officers on the scene approached to find him unresponsive still holding what appeared to be a revolver in his left hand with his index finger on the trigger. On his right leg was a cell phone. Subsequent investigation revealed that Mr. Hutson had been sending text messages during the time leading up to the confrontation.¹ Kent County paramedics arrived and, after consulting with doctors at Kent General Hospital, Mr. Hutson was pronounced dead.

The DSP Homicide Unit responded and began an investigation. The item the officers believed to be a firearm was recovered from Mr. Hutson's hand. Further investigation revealed it was, in fact, not a firearm. It was a cigarette lighter that looked like a revolver. The scene was examined, photos were taken and all available video recordings of the events were collected. All of the officers involved were interviewed in the days following the incident.

Tpr. Macauley stated in his interview that when he discharged his weapon he believed his life and the lives of the other officers were endangered by Mr. Hutson's actions. The other officers located near Tpr. Macauley shared this perception. A review of the available dash-cam videos corroborated much of the facts relayed by the officers. While Mr. Hutson's actions could not be seen on the dash-cam videos because items in the rear of the truck obscured the view of the cab's interior, Tpr. Macauley's recollection was corroborated by other officers who shared his vantage point.

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 the Delaware State Police Department Trooper 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

¹ The texts sent by Mr. Hutson included "BOUTKIL MYSELF" and "Cant go jail."

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, it is the officer’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 the officer 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 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.

Tpr. Macauley was confronted with an apparently armed subject who was refusing to obey verbal commands to disarm. While Mr. Hutson appeared to be suicidal, officers were positioned in his line of fire such that even a suicide attempt on his part would have endangered the lives of the officers. Also, Tpr. Macauley’s observation of Mr. Hutson’s change in demeanor in turning towards the officers created the perception that the lives of the officers were being threatened. This perception was shared by other officers on the scene.

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