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September 3, 2009

Wilmington Police Department
Chief of Police Michael J. Szczerba
300 N. Walnut Street
Wilmington, DE 19801


RE: Use of Deadly Force – Sgt. George Taylor

Dear Chief Szczerba:

The Department of Justice has completed its investigation and review of the use of deadly force by Sgt. George Taylor on May 30, 2009. As a result, Sgt. Taylor'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 Millaney, Sr.
Deputy Attorney General

TPM/mam
Enclosure

REPORT OF THE ATTORNEY GENERAL
WILMINGTON POLICE DEPARTMENT USE OF DEADLY FORCE

MAY 30, 2009

Joseph R. Biden, III
ATTORNEY GENERAL

By: Timothy P. Mullaney, Sr. 
Director of Fraud Division

DATE: September 2, 2009

SCOPE OF THE INVESTIGATION

This is the report of the Office of the Attorney General on the use of deadly force against Marckia Wilkerson on May 30, 2009. Special Investigator Curtis Clifton of the Delaware Department of Justice conducted the investigation for the Department of Justice and Deputy Attorney General Timothy P. Mullaney, Sr. supervised the investigation and review of the use of force for the Office of the Attorney General. Statements were taken from police officers who were at the scene. Physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, a video tape of the scene and medical records were reviewed.

THE FACTS

On May 30, 2009 at 2156, Sgt. George Taylor and other Wilmington Police Department (WPD) officers responded to a complaint broadcast of a man armed with a handgun. WPD had received a complaint from Downtown Visions who had observed the defendant via video camera at 24th and Market Streets, Wilmington, Delaware. Downtown Visions provided a description of the defendant being a black male wearing a black jacket, black hat, black pants and a pink or red shirt underneath. The defendant was armed with a silver handgun and he put the handgun in his right-hand jacket pocket. The Wilmington Police Department Communications Center (WILCOM) repeated this description as well as the fact the subject was armed, to its units. Units responded into the area in an attempt to locate the defendant.

At 25th & West Streets, Sgt. George Taylor observed a subject matching the description provided by WILCOM in their initial dispatch. Sgt Taylor was operating a fully marked Wilmington Police Department vehicle and was wearing a WPD tactical uniform (black shirt and pants) with a vest that clearly stated the words "POLICE" on the front and back. Sgt. Taylor was wearing his Departmental issued gun belt with accompanying equipment. Sgt. Taylor was patrolling alone. Sgt. Taylor exited his vehicle and gave the defendant verbal commands to stop walking away from Sgt. Taylor. The defendant ignored Sgt. Taylor's commands and began to run away from Sgt. Taylor. The defendant drew a silver handgun from his person with his right hand. The gun had previously been concealed from view. Sgt. Taylor saw the handgun and unholstered his Department issued handgun and continued to pursue the defendant. The defendant continued to ignore Sgt. Taylor's verbal commands to stop.

A short distance after the initial foot chase began, the defendant either tripped or stumbled causing him to fall to the ground in the middle of the 2400 block of N. West Street. The defendant maintained possession of the handgun in his right hand. While on the ground, the defendant rolled or turned his upper torso toward Sgt. Taylor, pointing the handgun at Sgt. Taylor. Sgt. Taylor then fired his departmental issued weapon eight (8) times at the defendant striking the defendant's body multiple times. (Wilkerson sustained six (6) entry/exit wounds.) First aid was immediately administered to the defendant by other officers on scene. The handgun the defendant was carrying and pointed at Sgt. Taylor was recovered. The handgun the defendant was carrying was a Bryco Arms 9mm semi-automatic handgun with an obliterated serial number.

A review of the defendant's criminal history in the State of Delaware revealed he pled guilty on May 7, 2007 in New Castle County Superior Court in the State of Delaware before Judge Jan Jurden to the criminal charge of Possession of a Non-Narcotic, Schedule 1 Controlled Substance within 1000' of School Property, Title 16, § 4767, a Class G Felony. Due to the defendant's felony conviction, he is prohibited from possessing a deadly weapon.

PURPOSE OF THE ATTORNEY GENERAL REPORT

The Attorney General's investigation of police shootings serves a specific but limited purpose. The Attorney General determines whether a police officer's use of deadly force constitutes a criminal act. The Attorney General does not establish or enforce internal police policies concerning the proper use of deadly force by police officers. Police departments 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.

The only purpose of the Attorney General's investigation of this shooting is to determine whether the officer committed a crime when they used deadly force against Marckia Wilkerson... This report expresses no opinion whether the officers' actions complied with any departmental policies or procedures concerning the use of force set by the Wilmington Department. This is a matter of a separate internal investigation being undertaken by the Wilmington Police Department.

CONCLUSION

With respect to Sgt. George Taylor, Section 464 of Title 11 of the Delaware Code generally defines the legal use of force in self-protection cases. It provides that the use of force upon another person is justified when the individual using the force believes that it is immediately necessary for the purposes of protecting himself against the use of unlawful force by the other person. The law further provides that using deadly force is justified if the person using the force believes that such force is necessary to protect himself against death or serious physical injury. Under Delaware Law, it is the subjective state of mind of Sgt. George Taylor that is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Sgt. George Taylor 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, provided however, that 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.

After a thorough investigation and review of all the statements, reports, video and other evidence described above, it is the conclusion of the Office of the Attorney General that, as a matter of Delaware Law, Sgt. George Taylor's use of deadly force was justified in this case. At the time Sgt. George Taylor fired his weapon; Marckia Wilkerson had rolled or turned his upper torso toward Sgt. Taylor, pointing the handgun at Sgt. Taylor. Sgt. George Taylor believed that the use of deadly force was immediately necessary to prevent serious injury or death to himself.

The investigation of the facts and circumstances of the shooting fully supports the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Sgt. George Taylor's use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware law.