

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

SUBJECT: Marvin Jones

OFFICERS: Sean Nolan and Gaetan MacNamara

DATE OF INCIDENT: January 15, 2015

**By: Allison E. Reardon
Deputy Attorney General
July 16, 2015**

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 Sean Nolan and Officer Gaetan MacNamara of the Wilmington Police Department against Marvin Jones (“Mr. Jones”). Chief Special Investigator Jean Rothenburger conducted the investigation. Deputy Attorney General Allison E. Reardon reviewed the use of force for the Department of Justice. Investigators examined the 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 Wilmington 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 Wilmington Police Department. The sole purpose of this Department of Justice investigation is to determine whether the involved officers committed a crime when they used deadly force against Mr. Jones. One of the issues that must be considered in any law enforcement officer-involved shooting is whether the use of deadly force by the officer was justified under all the circumstances.

The Facts

On January 15, 2015, Wilmington Police Department (WPD) Officers Sean Nolan and Gaetan MacNamara were working the 2:00 pm to 1:00 am shift and were assigned to patrol duty. Officers Nolan and MacNamara were in full uniform and were operating a fully marked WPD vehicle. At approximately 4:50 pm they observed a maroon colored 2000 Mercury Gran Marquis with a New Jersey license plate travelling on North Market Street. At the intersection of Vandever Avenue and Market Street the vehicle turned left onto Vandever Avenue without engaging the left turn signal. The officers also reported that as the Gran Marquis made the turn across the oncoming lane of traffic, a vehicle in the oncoming lane with the right of way had to slam on its brakes to avoid a collision.¹ The officers activated their emergency lights and

¹ The near collision was later confirmed by the driver of the vehicle during his interview, although he said the other car came out of nowhere. He also reported that he went through a clear yellow light that was turning to red and he knew he was going to get stopped. The front seat

stopped the vehicle in the 100 block of Vandever Avenue for failing to use the turn signal and failing to yield the right of way.

Officer Nolan approached the driver and requested his license, registration and insurance card. The driver produced a photo copy of a valid Delaware learner's permit and the required registration and insurance. Officer Nolan then asked the passenger seated directly behind the driver for identification. The passenger told Officer Nolan that he did not have any identification, stated that his name was Will Hinton, provided a birth date, stated that he did not know his social security number and stated that he was from Georgia and in Delaware visiting family.² Officer Nolan observed that Mr. Jones was acting nervous while they were talking and leaned forward covering his waist with his right hand, placing it over the front of his waistband as if he was concealing something

While Officer Nolan talked to the occupants on the driver's side of the vehicle, Officer MacNamara approached the passengers on the other side of the vehicle and asked for identification. The female passenger provided her information. Officer MacNamara then requested identification from the male occupant in the back seat who stated that he did not have any identification and did not know his social security number but said that his name was Michael Jefferson.³

Officer Nolan and Officer MacNamara returned to their police car and discussed the information provided by the occupants of the car. They believed that Mr. Jones had provided false identification. Officer Nicholas Kroll was in the area and arrived as a back-up unit with his emergency lights activated and pulled up behind the first police car. Officers, Nolan, MacNamara and Kroll decided to remove Mr. Jones from the vehicle based Nolan's observations of Mr. Jones' behavior for officer safety. The officers agreed that Officer MacNamara would talk to the driver because he knew him from previous encounters and Officers Nolan and Kroll would ask Mr. Jones to get out of the car.

Officer MacNamara approached the driver and asked if there was anything illegal in the car to which the driver responded "no" but he began to act strangely, opening his eyes wide and shaking his head. Officer MacNamara stated that he believed the driver was trying to alert him that something was in the car or that he was very nervous about something in the car.

While Officer MacNamara talked to the driver, Officers Nolan and Kroll approached the left rear passenger door and Officer Nolan asked Mr. Jones to get out of the car. He also asked Mr. Jones if he had any weapons or anything that would hurt them and he said "no" and seemed compliant and relaxed. However, as soon as Mr. Jones got both feet on the ground, he attempted to flee by pushing his way through the space between Officer Nolan and the car. Officer Nolan grabbed at Mr. Jones, who was pushing him away. Officer Kroll jumped in and both officers wrestled with Mr. Jones to gain control over him. As the group of three scuffled and spun away from the trunk of the car, Officer McNamara rushed to assist. Officer Nolan yelled "get him".

passenger and passenger in the back seat also confirmed that the light was yellow and they thought they were going to get stopped.

² During the course of the investigation following the incident, the passenger was identified as Mr. Jones and will be referred to as Mr. Jones in this Report.

³ During the course of the investigation following the incident, the passenger was identified as Robert Carlisle and will be referred to as Mr. Carlisle in this Report.

Officer MacNamara's momentum took Mr. Jones toward the fence on the sidewalk and Mr. Jones said "we'll see, we'll see". Officer MacNamara also reported seeing Mr. Jones reaching toward his waist while they were struggling. As the struggle continued, Officer Kroll stated that they were spinning and getting a grip and losing a grip. The group scuffled ten or more feet away from the trunk, before spinning back to approximately three feet away from the trunk, where Mr. Jones, Officer Kroll and Officer MacNamara fell to the ground. Officer Kroll who was positioned near Mr. Jones' shoulders and head, heard Mr. Jones say "you're not going to f*** me up". Officer Nolan quickly looked to see if the Marquis or its occupants had moved; they had not. When he looked back, he observed Mr. Jones laying on his right side with a silver colored semi-automatic handgun in his right hand. Mr. Jones positioned the gun behind his back, pointed at Officer Nolan. Officer Nolan stated that he could see directly down the barrel of the weapon. Officer Nolan stepped back and yelled "gun, gun, look out gun" to warn the other officers of the threat and drew his weapon. Officers MacNamara and Kroll each reported seeing the gun as they were hitting the ground and jumped back. Officer Nolan stated that he thought Mr. Jones was going to shoot him and that he was afraid for his life and the lives of the other officers. He fired three times at Mr. Jones as the other officers backed away.

Officer Kroll reported that everything happened almost instantaneously - they hit the ground, he heard shouts of "gun, gun" and shots were fired as he was disengaging from Mr. Jones and fell backward. Officer Kroll felt a heat blast on his face and hand as he disengaged from Mr. Jones.

Officer MacNamara also heard Officer Nolan yelling "gun, gun", and he believed he heard two separate sets of gunshots. He reported hearing two or three shots at the same time he heard the shouts of "gun" and disengaged from Mr. Jones. He did not see who fired the shots, but he believed they had been fired by Mr. Jones. As he disengaged, he reported hearing three additional shots coming from the officer standing behind him. He saw a silver semi-automatic handgun with orange sights on the ground next to Mr. Jones' hand, within Mr. Jones' reach. Officer MacNamara reported seeing Mr. Jones reaching for the gun and attempting to get up when Officer MacNamara drew his service weapon and fired one round at Mr. Jones. Officer MacNamara stated that he was concerned for his safety and that of the other officers, and he believed that Mr. Jones intended to shoot them, when he fired his weapon. At the time of the incident, and until informed otherwise during the subsequent investigation, Officer MacNamara did not know that only three shots total had been fired - those fired by Officer Nolan. A citizen video taken shortly after the shooting shows a silver handgun lying on the ground next to Mr. Jones.

All of the officers stated that everything happened quickly and that they did not have a chance to use their department-issued tasers, cap-stuns or asps before Mr. Jones confronted them with deadly force.

After the officers determined that Mr. Jones was no longer a threat, Officer MacNamara rendered aid urging Mr. Jones to keep his eyes open and to stay awake. Officers Nolan and Kroll secured the other occupants of the Gran Marquis as other police and emergency vehicles arrived on the scene. Officer MacNamara was relieved by Officer Brian McCanney who took over performing CPR and rendered first aid until Emergency Medical Services (EMS) personnel arrived and assisted them in moving Mr. Jones. When they rolled Mr. Jones over they discovered

a black gun holster clipped to the inside of his pants with a metal clip positioned at the small of his back. Mr. Jones was transported to Christiana Care for treatment. Mr. Jones is now a quadriplegic as the result of his injuries.

The reports of the driver and front seat passenger confirmed that Mr. Jones had a gun on his person and are consistent with the actions Mr. Jones took after exiting the car. The driver and front seat passenger stated that, when the police officers returned to their car to check the passengers' identification, the two rear seat passengers told the driver to pull off because they were "strapped," which the driver and front seat passenger understood to mean carrying guns. The driver refused. The driver heard Mr. Jones saying over and over "I can't go back",⁴ He heard one of the men say "somebody got to die". He also heard Mr. Jones and Mr. Carlisle say that they were going to shoot both cops in the head as they told the driver to pull off. The driver also reported that he saw the officers struggling with Mr. Jones, heard the shouts of "gun," observed the officers backing away suddenly and saw one of the officers discharge his weapon.

The WPD police vehicles were not equipped with dash cameras and the officers were not wearing body cameras. However, a camera from the Job Corps building across the street from the scene recorded a video of the incident. In that video officers can be seen struggling with Mr. Jones for approximately 14 seconds before backing away suddenly and discharging their weapons.

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 Wilmington Police Department Officers Sean Nolan and Gaetan MacNamara 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." 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 Officer Nolan's and Officer MacNamara's subjective state of mind that is of critical importance in determining whether their use of force was justifiable. The specific factual issue is whether Officer Nolan and Officer MacNamara actually believed at the time that they intentionally fired their weapons that such action was necessary to protect themselves or others from death or serious physical injury, so long as these officers were not

⁴ The female passenger reported that she heard someone say "I'm not going back". The investigation revealed that Mr. Jones was on parole and Mr. Carlisle was on probation related to criminal convictions in the State of Georgia. Both were prohibited from owning or possessing firearms.

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.

During Mr. Jones' attempts to flee and the resulting struggle with Officers Nolan, Kroll and MacNamara, Mr. Jones pulled a handgun. Officers Nolan and MacNamara each believed that the use of deadly force was necessary to prevent serious injury or death to themselves and to the other officers with them. Officers Nolan and MacNamara responded to Mr. Jones' potential use of deadly force by discharging their weapons and striking Mr. Jones. The depiction of the incident from the surveillance video obtained from the Job Corps building is consistent with the events as described by the officers and witnesses who were interviewed after the shooting.

The investigation of the facts and circumstances fully support the reasonableness of Officer Nolan's and Officer MacNamara's belief that their lives or the lives of the other officers were in danger. That belief was not formed recklessly or negligently. As a result, the use of deadly force by Officer Nolan and Officer MacNamara was justified and is not subject to criminal prosecution.