

**FINAL REPORT OF THE DEPARTMENT OF JUSTICE  
DELAWARE PROBATION AND PAROLE USE OF DEADLY FORCE**

**SUBJECT: Jamera Fisher  
OFFICER: Probation and Parole Officer Ricky Porter**

**DATE OF INCIDENT: October 25, 2016**

**Dated: August 2, 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 Delaware Probation and Parole Officer Ricky Porter of the Department of Correction (“DOC”) <sup>1</sup> against Jamera E. Fisher (referred to hereinafter as “Mr. Fisher”).<sup>2</sup> Investigators from the Office of Civil Rights and Public Trust examined the crime scene and reviewed evidence, including 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 Officer Porter’s actions complied with departmental policies or procedures concerning the use of force set by the DOC, or whether with the benefit of hindsight, Officer Porter could have proceeded differently.

## **Facts**

Officers assigned to the Dover Police Department’s Safe Streets Unit received information that Mr. Fisher was wanted on a capias and was armed with a handgun. On the morning of October 25, 2016, officers confirmed that the capias for Mr. Fisher remained outstanding. Officers responded to the area that Mr. Fisher was known to frequent. As multiple officers conducted surveillance, a black Dodge Avenger approached and officers identified Mr. Fisher as the driver. Mr. Fisher pulled into the alleyway behind the 400 block of New Castle Avenue in the Capital Green area, parked in one of the parking spots, exited the vehicle and approached a residence. When the occupants of the residence did not respond, Mr. Fisher made a call on his cell phone. A blue Ford Expedition arrived and pulled up and parked along the left side of the alley behind a silver Pontiac. Both the Expedition and the Pontiac were parked to the rear and perpendicular to the Dodge Avenger. Mr. Fisher stood outside of the car talking with two other men and appeared to mimic pulling a gun from his waistband. Mr. Fisher and the driver of the Expedition then got into the Dodge Avenger and closed the doors. Mr. Fisher was in the driver’s seat.

Once Mr. Fisher was seated inside of his vehicle, officers made the decision to take him into custody. Officer James Johnson pulled his unmarked black Ford Crown Victoria police vehicle into the middle of the alley and stopped near the Expedition, behind and perpendicular to

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<sup>1</sup> Officer Porter is a DOC Probation and Parole Officer assigned to work along with Dover Police Department officers in the Safe Streets Unit.

<sup>2</sup> The Department of Justice issued a preliminary report on April 3, 2017 to notify Officer Porter and the public of our conclusion. However, as Mr. Fisher was still being prosecuted for the offenses related to the incident, the preliminary report did not include detailed factual findings. The charges have now been resolved and the DOJ issues this final report.

Mr. Fisher's vehicle. Officer Johnson's partner, Officer Porter, was riding in the passenger seat. Officers Johnson and Porter exited the vehicle, leaving their doors open. Officer Johnson walked toward Mr. Fisher's vehicle. Officer Johnson was dressed in black and wore a tactical vest with the word "POLICE" in large white letters written across the front and back of the vest; attached to the shoulder strap was his police badge.<sup>3</sup> As he approached, Officer Johnson commanded Mr. Fisher to get out of the car, but Mr. Fisher did not comply. As Officer Johnson opened the car door and grabbed Mr. Fisher's arm, Officer Porter yelled that the car was in gear and Officer Johnson told Mr. Fisher to put the vehicle in park. Instead of putting the car in park, Mr. Fisher pushed on the gas accelerating the car backwards, striking Officer Johnson's car. As Mr. Fisher accelerated backwards, back-up Dover Police Officers Robert Barrett and Jacob Rankin arrived and pulled their vehicle in front of the Dodge Avenger to block its forward path. Officer Johnson was able to jump back to avoid being dragged by Mr. Fisher's vehicle. Officer Porter ran backwards between the police car and the parked Expedition just as the Dodge Avenger rammed the police car.. Officer Johnson approached the driver's side of the Dodge Avenger and deployed his Taser, but only one probe struck Mr. Fisher. Mr. Fisher then accelerated the car forward, striking the car in which Officers Barrett and Rankin were seated. Mr. Fisher threw the Dodge Avenger into reverse, wedging the vehicle slightly, before again accelerating toward the police vehicle, which was blocking his forward path. Also in Mr. Fisher's path were Officer Barrett, who was now standing in the space between the police car and the Pontiac, Officer Rankin, who was standing on the passenger side of the police car, and Officer Porter, who had taken position to the front and passenger side of the parked vehicles. As Mr. Fisher accelerated forward toward the police vehicle and the officers, he struck the parked Pontiac and the police car with enough force that both vehicles moved. Officer Porter discharged his weapon firing four shots and striking Mr. Fisher, who then raised his hands and surrendered. By this time, the front passenger side of Mr. Fisher's vehicle was pinned against the parked Expedition.

Mr. Fisher received treatment at the hospital for non-life threatening gunshot wounds. The passenger in Mr. Fisher's car was not injured. A 9mm RUGER handgun with an extended magazine containing 30 rounds and a round in the chamber was located on the floor of the driver's side of Mr. Fisher's vehicle.

### 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 Officer Porter was not a criminal act because the use of such force against Mr. Fisher 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

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<sup>3</sup> Other responding Safe Streets Unit members were similarly dressed and wore black tactical vests with large white lettering that identified them as either police or probation and parole officers.

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 Porter’s subjective state of mind is of critical importance in determining whether his use of force was justifiable. The specific factual inquiry is two-pronged. The first question is whether Officer Porter actually believed, at the time he intentionally fired his weapon, that such action was necessary to protect himself or others from death or serious physical injury. The second question is whether Officer Porter was 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 reportedly armed suspect who was wanted on an outstanding *capias*. Officers located Mr. Fisher and observed him mimic pulling a gun from his waistband. Officers believed the actions were consistent with reports that Mr. Fisher was armed. When officers attempted to take Mr. Fisher into custody, he actively resisted and rammed his car backward and forward hitting police vehicles and parked cars and nearly striking responding officers.<sup>4</sup> Officer and civilian witnesses stated that they believed Mr. Fisher used his car as a weapon.<sup>5</sup> Citizen witnesses corroborated the officers’ accounts of the events, and a video surveillance camera at an adjacent business and police dash cam video captured the incident.

Officer Porter provided a voluntary statement in which he said that he discharged his weapon because he was in fear for his life and the lives of the other officers when Mr. Fisher accelerated his vehicle towards them. Officer Rankin stated that he was in fear for the safety of Officer Barrett and Officer Porter as the result of Mr. Fisher’s actions. Officer Barrett believed that he was going to be struck and killed, and he feared for the safety of Officer Porter as Mr. Fisher accelerated toward them. Officers Barrett and Rankin both stated that they were prepared to respond with deadly force, but did not do so because they did not have clear shots.

The investigation of the facts and circumstances fully support the reasonableness of Officer Porter’s belief that his life and the lives of others 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.

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<sup>4</sup> Civilian witnesses stated that they recognized the officers as police officers when they approached Mr. Fisher. They also recognized the black Ford Crown Victorias as police vehicles, referred to on the streets as “ghosts.” Mr. Fisher admitted during his voluntary interview at the hospital that he knew the officers were police officers.

<sup>5</sup> Witnesses stated they heard the sound of Fisher’s engine revving, tires squealing and the “boom” of Mr. Fisher’s vehicle striking the other cars.