

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

**SUBJECT: ADAM RADCLIFFE**

**OFFICER: NICHOLAS SHOVLIN**

**DATE OF INCIDENT: December 15, 2017**

**Dated: September 21, 2018**

## **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 Trooper Nicholas Shovlin (hereinafter referred to as “Trooper Shovlin”) from the Delaware State Police against Adam Radcliffe (referred to hereinafter as “Mr. Radcliffe”). Investigators from the Office of Civil Rights and Public Trust examined the crime scene, reviewed surveillance video, reports from officers who responded to the scene, reports from the Division of Forensic Science, witness interviews, and physical evidence. 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 officer’s actions complied with departmental policies or procedures.

## **Facts**

Mr. Radcliffe was driving a Honda Civic during a snowstorm in New Castle County on December 15, 2017. Trooper Shovlin was on duty and noticed the Civic make a right turn onto Centerville Road, by driving up and over a raised concrete median, in the process, the Civic hit a pole,<sup>1</sup> but failed to stop. Trooper Shovlin also felt the vehicle was driving too fast for the road conditions at the time; specifically, he stated most vehicles were traveling between 5-15 miles per hour, but the Civic appeared to be going 35-40 miles per hour. Trooper Shovlin sought to initiate a traffic stop and activated his emergency lights. According to the call for service records, this took place at 4:24 in the afternoon. Trooper Shovlin’s fully marked, departmentally-issued Chevy Tahoe was equipped with an in-car camera, sometimes referred to as a motor vehicle recording, (hereinafter “MVR”), which captured some of the relevant events and is described below.

As Trooper Shovlin initiated a stop, the Civic, which had its hazard lights on, veered around traffic, which was backed-up to exit for Kirkwood Highway from Route 141. The Civic then re-merged with exiting traffic and came to a stop—with the driver’s side window rolled down. Mr. Radcliffe appeared to gesture at Trooper Shovlin. Using a public address system,

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<sup>1</sup> Later investigation revealed that the Civic had been involved in three other accidents on the same day. The first was a rear-end collision on Route 4, in the area of Robinson Lane. After the collision, the Civic drove around the vehicle and scraped the left side of the car it struck. The second incident involved the striking of a parked car on Maryland Avenue. Witnesses from this incident, including individuals from a nearby Fire Company, later advised investigators that Mr. Radcliffe was slurring his words, was slow and lethargic in his responses, said he needed sleep, and had pinpoint pupils. Mr. Radcliffe fled the scene of this accident in the Civic. Finally, there was another rear-end collision with a vehicle on Boxwood Road.

Trooper Shovlin told Mr. Radcliffe to drive down the ramp and to the right. The Civic drove down the ramp and merged onto Kirkwood Highway, but it did not stop.

Trooper Shovlin pursued the Civic, which still had its flashing lights on, as it travelled rapidly, from lane to lane, getting very close to other cars. The flashing lights on the police car were visible on the MVR, as they reflected on the road. Trooper Shovlin can be heard on the MVR, stating, "he's probably going to hit someone else." Seconds later, the Civic made an abrupt U-turn, forcing drivers to hit their brakes to avoid striking the Civic. The Civic skidded across the road, and at various times, into oncoming traffic, nearly striking other cars along the way. This manner of driving continued over various snow-covered roads, including residential neighborhoods. Trooper Shovlin deactivated his lights and sirens, which also stopped the audio recording within his departmentally-issued Tahoe. However, the video continued to record.

Trooper Shovlin was not able to identify the driver during this pursuit. As such, he did not know at the time that Mr. Radcliffe was on probation as a result of a Superior Court conviction from October 27, 2017. As a result of the conviction and probation, Mr. Radcliffe was ordered to undergo a substance abuse evaluation and follow treatment. Investigators later discovered text messages on Mr. Radcliffe's phone that reveal those who knew Mr. Radcliffe believed he had suffered a relapse on the day in question.

After approximately seventeen minutes, the Civic drove through a parking lot in front of an Acme grocery store and came face to face with Trooper Shovlin's marked Chevy Tahoe. Trooper Shovlin stopped his Tahoe and the Civic began to back up. The Civic was perpendicular to the Tahoe when Trooper Shovlin could be seen, running toward the passenger side of the Civic. Trooper Shovlin began to skid and the Civic continued to move. As the Civic leaves the view of the MVR, Trooper Shovlin appears to be skidding alongside the passenger-side window of the Civic, as it continues to drive away and off-camera.

### *Interview of Trooper Shovlin*

During his interview in connection with this investigation, Trooper Shovlin described seeing Mr. Radcliffe with a blank look on his face, smoking a cigarette, as the windows on the Civic were down. He described running at the passenger door and reaching in, before his arm became stuck. Trooper Shovlin assumed Mr. Radcliffe put the windows up. Trooper Shovlin advised he yelled at Mr. Radcliffe to stop the car, but Mr. Radcliffe did not acknowledge him.

At this point, Trooper Shovlin felt he was in a bad position, as Mr. Radcliffe now had the "upper hand." He described Mr. Radcliffe as picking up speed as the left side of his body was lodged against the passenger side door of the Civic. In recounting the event, Trooper Shovlin stated he considered whether objects within the parking lot could physically strike or impact him as he clung to the passenger-side of the Civic.

Trooper Shovlin said he struggled to maintain his footing as Mr. Radcliffe continued to drive. He put the muzzle of his departmentally-issued firearm through the opening in the window frame. Trooper Shovlin recalled pulling the trigger the first time, aiming at the driver. Thereafter, Trooper Shovlin said he became disoriented. He recalled he was still not freed from

the window and then fired two more shots in the same direction. Trooper Shovlin assumed one of the rounds hit the window and shattered it, however, glass was not located in the parking lot. Trooper Shovlin then fell and hit the ground.

### *Witness Statements*

Corporal William Thompson, from Delaware State Police, was off-duty but happened to be in the same shopping center. He drove down Farrand Drive and saw Trooper Shovlin, laying in the snow. Corporal Thompson described Trooper Shovlin as shaken up. He later noticed Trooper Shovlin was limping and his uniform was ripped at the right elbow.

Witness 1 was travelling toward the Acme parking lot, from Farrand Drive and observed Trooper Shovlin run toward the Civic, ordering the driver out of the car. Witness 1 saw Trooper Shovlin holding on to the door of the Civic, but was unable to understand how he was holding on. It appeared that Trooper Shovlin was sliding “like he was on skis.” Witness 1 was concerned the Civic was going to strike her car because it was travelling so fast. This witness watched as the Civic dragged Trooper Shovlin “all the way down to about the end where Farrand Drive intersects.” Witness 1 described hearing two gunshots, approximately thirty seconds after they turned out of her sight.

Witness 2 was cleaning snow from her parked car when she heard cursing and yelling. This noise prompted Witness 2 to look and she saw Trooper Shovlin, who appeared to clinging onto the window on the Civic. Witness 2 described observing Trooper Shovlin constantly trying to get back on his feet, but the car was going too fast and the roads were too slippery. This witness watched as the car slowed for the stop sign at Farrand Drive, then accelerated quickly to make a left turn.

Witness 3 was employed at a business within the shopping center, and was outside for a cigarette break. This witness observed the Civic traveling through the parking lot and heard it sliding. Witness 3 saw the officer run toward the car, while yelling, “get out of the fucking car.” Witness 3 described the driver of the Civic as “trying to hurry up and leave.” This witness saw Trooper Shovlin running with the car, then described him as “hopping on” and finally as being drug by the car. The witness yelled aloud “oh my god,” as she observed the officer hanging from the side of the car. Witness 3 did not observe the shooting itself.

Witness 4 heard a commotion while leaving the Acme. This witness saw Trooper Shovlin on the passenger side of the car. It appeared as though Trooper Shovlin was trying to keep his footing. Witness 4 described the Civic dragging Trooper Shovlin as far as she could see.

Witness 5 saw a vehicle travel down Farrand Drive, with a person outside of the vehicle. Witness 5 heard a man yell, “I can’t stop.” It appeared to Witness 5 as though the person was trying to disengage himself from the vehicle as he was skiing on his shoes. Witness 5 could not recall the exact words he heard, but heard the man state something to the effect of, “I am going to have to shoot.” Witness 5 observed the driver of the Civic make no effort to stop. Witness 5

heard gunshots as the vehicle turned and saw the man tumble off the Civic. At that point, Witness 5 realized the man was a police officer.

### *Physical Evidence*

Surveillance video from the businesses within the Kirkwood Plaza shopping center did not capture the incident. The distance between the area where Trooper Shovlin approached the Civic and the area where Trooper Shovlin fell to the ground is approximately 820 feet. Two casings were found in the road. Despite Trooper Shovlin's recollection that the handgun was fired three times, it was, in fact, fired four times. However, only two casings were located in the parking lot by investigators.

The physical evidence demonstrated that the car continued to turn left, out of the parking lot and onto Farrand Drive. The Civic exited the roadway and crashed through the fence of a residential home. Officers from various agencies responded after hearing a report of shots fired. Detective Dave Chorlton of the Delaware State Police, Newport Police Officers Thomas Kashner and Officer Dominick Mills, and Officer Corey Belk of the New Castle County Police happened to be near the scene. Those officers responded and located the Civic. These officers worked to free Mr. Radcliffe from the Civic, which was nearly vertical in a deep creek-bed. Once he was removed from the vehicle, Detective Chorlton and Officer Mills performed CPR, while Officer Kashner attempted to control Mr. Radcliffe's bleeding.

The autopsy revealed Mr. Radcliffe was struck four times; with entrance wounds on the right upper arm, right chest, right wrist and right forearm. The toxicology screen conducted on Mr. Radcliffe was positive for fentanyl, alprazolam, trazodone, and cholorphenylpiperazine, 7-aminoclonazepam. The Division of Forensic Science located trazadone and clonazapan, as well as bags of suspected heroin on Mr. Radcliffe's person.

Trooper Shovlin was also treated by medical staff. The medical records noted abrasions to both elbows. Additionally, there was an abrasion and swelling on the left hand.

### **Conclusion**

After a thorough investigation and review of all statements, surveillance, and reports of investigators and the Division of Forensic Science, it is the conclusion of the Department of Justice that, as a matter of Delaware law, the use of force by Delaware State Police Trooper Shovlin was not a criminal act because the use of such force against Mr. Radcliffe was justified. Title 11 Section 464 of the Delaware Code 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." Further, Title 11 Section 464 (c) provides, "[t]he use of deadly force is justifiable under this section if the defendant believes that such force is necessary to protect the [officer] against death, [or] serious physical injury..."

Under Delaware law, Trooper Shovlin'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 Trooper Shovlin 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 Trooper Shovlin 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).

Mr. Radcliffe was operating the Civic in a reckless manner. While not all of the reckless acts committed by Mr. Radcliffe were known by Trooper Shovlin at the time, the disregard for safety of the people on the road was actually witnessed by Trooper Shovlin. Mr. Radcliffe's status as a probationer, the results of his toxicology screen, and the concern of his loved-ones regarding a relapse, were not known to Trooper Shovlin. Regardless, they provide context on why Mr. Radcliffe may have been unwilling to stop for police and instead continued to flee. This information supports Trooper Shovlin's observations that Mr. Radcliffe was not reacting to his physical presence as he clung to the passenger side of his car in the parking lot.

Trooper Shovlin was stuck in the passenger window of the Civic and, ultimately, dragged. The distance between his approach to the car and where he was found in the road was 820 feet; throughout that distance, any object in the parking lot could have resulted in his death or serious injury. In fact, one witness specifically articulated concern that the Civic was going to hit her car as it travelled out of the parking lot, with Trooper Shovlin attached to it. Further, it was known to Trooper Shovlin that Mr. Radcliffe had been driving erratically throughout the duration of his pursuit—it was reasonable to believe he would continue to drive erratically, despite having a human being stuck with his arm inside of the car. Trooper Shovlin had reason to believe that Mr. Radcliffe would use the vehicle as a deadly weapon. At the time he fired his weapon, the belief of Trooper Shovlin that he was in danger of death or serious physical injury, was justified. 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.