

REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE STATE POLICE & NEW CASTLE COUNTY POLICE
DEPARTMENTAL SHOOTING

September 16, 2008

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THE SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against Maurice Faulkner by Delaware State Police Corporals Andre Brown and Adalberto Garcia and New Castle County Police Officer Joseph Wyka on September 16, 2008. Special Investigator Anthony Davolos conducted the investigation for the Department of Justice. Deputy Attorney General Timothy Mullaney supervised the investigation and review of the use of force for the Department of Justice. They reviewed statements taken from Corporals Andre Brown and Adalberto Garcia and Officer Joseph Wyka along with statements taken by other officers at the scene. They also reviewed physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, photographs, videos and medical reports.

PURPOSE OF THE ATTORNEY GENERAL'S INVESTIGATION

The Department of Justice'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.

This report expresses no opinion whether the officers' actions complied with any departmental policies or procedures concerning the use of force set by The Delaware State Police and The New Castle County Police, or whether, with the benefit of hindsight, the officers could have proceeded differently. The only purpose of the Department's investigation of this shooting is to determine whether the officers committed a crime when they used deadly force against Maurice Faulkner. One of the issues that must be considered in any intentional shooting is whether the use of deadly force was justified under all the circumstances.

FACTS OF THE INVESTIGATION

On September 16, 2008, at approximately 1730 hours, the PNC Bank located at 250 Foxhunt Drive, Newark, Delaware was robbed by a black male displaying a handgun. The suspect was described as wearing a white T-shirt and grey pants. The suspect fled onto Route 40 in a Rent-A-Center box truck. The suspect vehicle was followed by a witness from the bank who reported his location via cell phone. The suspect vehicle was observed by the civilian witness driving into the College Square Shopping Center on Route 72 and then exiting the shopping center going south on Route 72. It was at this point where most uniformed officers made visual contact with the suspect and engaged in a low speed pursuit.

The suspect continued on Route 72 to Route 4 and turned right, heading westbound on Route 4. The suspect continued on Route 4 to Route 896 where he turned right and proceeded northbound on Route 896 to the entrance of the Chrysler Auto Plant. The suspect vehicle was traveling no faster than fifty-five miles per hour at any time, but would not yield and pull over to the pursuing marked vehicles utilizing lights and sirens.

As the suspect vehicle entered the Chrysler property, Corporal Brown, DSP, Trooper Garcia, DSP and Officer Wyka, NCCPD were directly behind. The suspect vehicle veered to the right and proceeded onto Mopar Drive. Mopar Drive is on the North side of the Chrysler Auto Plant property and runs East/West, parallel to the railroad tracks. With DSP and NCCPD units directly behind, the suspect vehicle traveled westbound approximately one tenth of a mile and stopped. Corporal Brown stopped behind the suspect vehicle slightly to the left. Officer Wyka stopped behind Brown and to the right. Trooper Garcia stopped behind the suspect vehicle and several feet to the left or south of Brown and Wyka. All three officers exited their vehicle. At this point, the operator of the Rent-A-Center truck opened the driver's door and exited the truck with a black gun in his hand. The operator, later identified as Maurice Faulkner, turned to Corporal Brown, who was approximately twenty-five feet away, and pointed the gun directly at him. All three officers, fearing for Corporal Brown's safety, opened fire on Faulkner. Corporal Brown fired several rounds at Faulkner and then retreated to the rear of his vehicle to reload. Trooper Garcia also fired at Faulkner and retreated to the rear of his vehicle. Officer Wyka fired one burst at Faulkner and then changed position to the rear of his vehicle and fired a second burst. The officers approached Faulkner giving commands to show his hands which were concealed. The gun was on the ground within his reach. The officers then handcuffed Faulkner and immediately begin life saving measures. The officers were joined shortly by a DSP medic from the helicopter. Faulkner was transported to the Christiana Trauma Center where he was pronounced dead of multiple gunshot wounds.

CONCLUSION

Title 11, section 464 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 also provides that using deadly force is justified if the person using the force believes that such is necessary to protect himself against death or serious physical injury. Under Delaware Law, it is the subjective state of mind of Officers Brown and Garcia which is of critical importance in determining whether their use of deadly force was justifiable in this case. The specific factual issue is whether Officers Brown and Garcia actually believed at the time that they intentionally fired their weapons that such action was necessary to protect themselves from death or serious physical injury,

provided however, that the officers were 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.

Furthermore, Section 465 of Title 11 of The Delaware Code generally defines the use of force for the protection of others. It provides that the use of force upon or toward the person of another is justifiable to protect a third person when the defendant would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant believes to be threatened to the person whom the defendant seeks to protect; and, under the circumstances as the defendant believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force

Under Delaware Law, it is the subjective state of mind of Officer Wyka which is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Officer Wyka actually believed at the time that he intentionally fired his weapon that such action was necessary to protect Corporal Brown 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 and other evidence described above, it is the conclusion of The Department of Justice that, as a matter of Delaware Law, the use of deadly force by Officers Brown, Garcia and Wyka was justified in this case. At the time the officers fired their guns, they believed deadly force was immediately necessary to prevent serious injury or death to themselves and/or each other. The investigation of the facts and circumstances of the shooting fully support the reasonableness of those beliefs, and that it was not formed recklessly or negligently. As a result, the use of deadly force by Officers Brown, Garcia and Wyka was justifiable under the circumstances and is not subject to criminal prosecution under Delaware Law.