

REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

DELAWARE STATE POLICE SHOOTING

SEPTEMBER 20, 2007

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SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against Aneudi Rodriguez by Cpl. Daniel McColgan of the Delaware State Police on September 20, 2007. Mr. Rodriguez survived the injuries sustained in this incident. Special Investigator Curtis Clifton conducted the investigation and Deputy Attorney General Eugene M. Hall supervised the investigation and review of the use of force for the Department of Justice. Statements taken from police officers who were at the scene were reviewed. Physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, evidence and medical records were also reviewed by the Delaware Department of Justice.

PURPOSE OF THE ATTORNEY GENERAL'S INVESTIGATION

The Department of Justice's investigation of police shootings serves a specific but limited purpose. The Department determines whether a police 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 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 officer's actions complied with the departmental policies or procedures concerning the use of force set by the

Delaware State Police or whether, with the benefit of hindsight, the officer could have proceeded differently. This is a matter of a separate internal investigation being undertaken by the Delaware State Police. The only purpose of the Department's investigation of this shooting is to determine whether the officer committed a crime when he used deadly force against Aneudi Rodriguez. One of the issues that must be considered in any intentional shooting is whether the use of deadly force was justified under all of the circumstances.

FACTS OF THE INVESTIGATION

On Thursday, September 20, 2007 at approximately 2043 hours, uniformed Troopers Cpl. McColgan, Hudek and Day were notified by RECOM and responded to the Christiana Care Center located at 2401 Philadelphia Pike, Claymont, Delaware for a burglar alarm activation. Upon arrival, Cpl. McColgan observed a window had been smashed out. A perimeter was set up and a request for a K-9 unit was made. While awaiting the arrival of the K-9 unit, Cpl. McColgan observed an individual (later identified as Aneudi Rodriguez) inside the building. Aneudi Rodriguez looked out the window at Cpl. McColgan and walked away from the window further into the building.

Suddenly, Aneudi Rodriguez ran out of the building in an attempt to avoid capture and was chased by Troopers Hudek and Day toward Cpl. McColgan. As he ran toward Cpl. McColgan, Cpl. McColgan attempted to take him into custody by tackling him. In the process of that, Cpl. McColgan was knocked to the ground and

momentarily lost consciousness. Aneudi Rodriguez continued to flee southbound pursued by Troopers Hudek and Day who were joined by Cpl. Deskis. When Cpl. McColgan regained his faculties, he stood up and realized he had sustained an injury to his left leg and ankle. Unable to join in the foot pursuit, Cpl. McColgan drove his patrol vehicle to the Holly Oak Shopping Center in an attempt to get ahead of Aneudi Rodriguez and the pursuing Troopers.

Aneudi Rodriguez jumped the fence just north of the Holly Oak Shopping Center that was too dangerous for the Troopers to jump and land safely on the other side. As Aneudi Rodriguez ran across the parking lot, Cpl. Deskis yelled to Cpl. McColgan that Aneudi Rodriguez was heading right for him. Cpl. McColgan intercepted Aneudi Rodriguez by grabbing him by the shirt and Aneudi Rodriguez immediately began fighting with the Trooper. Cpl. McColgan was struck numerous times about the face and head with closed fists. Aneudi Rodriguez struck Cpl. McColgan so hard with a solid punch to the jaw that Cpl. McColgan saw lights and thought Aneudi Rodriguez was going to knock him unconscious. He feared that if he was knocked unconscious, Aneudi Rodriguez would take his handgun and kill him and/or use his gun on the other Troopers. Cpl. McColgan did not know how long it would take for assisting Troopers to reach his location where he was fighting with Aneudi Rodriguez. Believing he had done everything possible to make Aneudi Rodriguez surrender prior to the shooting, Cpl. McColgan drew his handgun from his holster and fired a single shot striking Aneudi Rodriguez. When Cpl. McColgan fired his gun, Aneudi Rodriguez was silhouetted by a bright light on a nearby building which hampered Cpl. McColgan's ability to clearly see Aneudi Rodriguez and

Cpl. McColgan described the moment he fired his handgun as a “point and shoot” situation rather than aiming the gun.

After Aneudi Rodriguez was shot he fled and was located lying on the ground, down an embankment, behind the Holly Oak Shopping Center. The Troopers rendered first aid until the arrival of paramedics and medical units. Aneudi Rodriguez was transported to the Christiana Hospital where he was treated and survived his injuries. He is presently incarcerated pending sentencing after having pled to Burglary 3rd Degree and Felony Resisting Arrest. Cpl. McColgan was taken to Wilmington Hospital where he was examined and treated for a mild head injury, contusions on the face and head, lacerations and abrasions of the face, head, elbow, knee, and a sprained ankle.

CONCLUSIONS

With respect to Cpl. Daniel McColgan, 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 also 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 Cpl. McColgan that is of critical importance in determining whether his use of deadly force was justifiable in this

case. The specific factual issue is whether Cpl. McColgan 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 and other evidence described above, it is the conclusion of the Department of Justice that, as a matter of Delaware Law, Cpl. McColgan's use of deadly force was justified in this case. At the time Cpl. McColgan fired his weapon, Aneudi Rodriguez was repeatedly assaulting Cpl. McColgan with his closed fists. Cpl. McColgan was struck repeatedly and so hard that at one point he saw a flash of light and thought he was going to be knocked unconscious. Cpl. McColgan 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, Cpl. McColgan's use of deadly force was justifiable under the circumstances and is not subject to criminal prosecution under Delaware law.