

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

NOVEMBER 6, 2006

COPY

By: Eugene M. Hall  
Deputy Attorney General

DATE: May 10, 2007

## SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the investigation of the Wilmington Police Department's November 6, 2006 use of deadly force against Derek Hale. Special Investigator Robert Carmine conducted the investigation. Deputy Attorney General Eugene Hall supervised the investigation and review of the use of force for the Department of Justice. Statements were taken from both police officers and civilian witnesses who were at the scene. Investigators examined the actual crime scene both on the date of the shooting as well as during a subsequent visit to the scene. They also reviewed physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, a videotape of the scene and medical records.

## PURPOSE OF THE DEPARTMENT OF JUSTICE REPORT

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 Wilmington Bureau of Police or whether, with the benefit of hindsight, the officer could have proceeded differently. This is a matter of a separate internal investigation undertaken by the Wilmington Bureau of 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 Derek Hale. 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.

## THE FACTS

The following information is provided as background to some of the events which led up to the activity of November 6, 2006. The Delaware State Police had been conducting a lengthy and ongoing investigation of illegal drug distribution, sale of drugs, weapons violations, and conspiracies involving members of the Pagan Motorcycle Gang. The Pagans are considered one of the Federal Bureau of Investigation's 'top-five' (the five largest Outlaw Motorcycle Gangs).<sup>1</sup> Their members engage in a variety of violent criminal activities, including assault, robbery, rape, murder, prostitution, arson, bombings, burglary, extortion, and drug trafficking."<sup>2</sup> According to the National Drug Intelligence Center, "The Pagans Motorcycle Club remains a criminal threat to

---

<sup>1</sup> Federal Bureau of Investigation, *Safe Street Violent Crime Initiative Report: Fiscal Year 2000*, <http://www.fbi.gov/publications/safestreets/ssgu00.pdf> (last visited Jan. 22, 2007).

<sup>2</sup> *Id.*

the . . . states in which it operates. It is a resilient organization . . . [T]he threat to the general public and law enforcement from PMC will increase as it defends its existing territory. . . .”<sup>3</sup>

The ongoing State Police investigation ultimately led to several search and arrest warrants for a number of suspects for numerous offenses. The investigation consisted of undercover work, lengthy surveillances and, ultimately, a wire tap on the telephones of those who were identified as the principal targets of the investigation. One of the principal targets was Raul Morales, a member of the Pagans Motorcycle Gang, who resided at 1403 W. 6<sup>th</sup> Street, Wilmington, Delaware. In the week preceding the November 6 incident, Mr. Morales was repeatedly seen accompanied by a person who was later identified as Derek Hale. Mr. Hale was a member of the Virginia branch of the Pagans Motorcycle Gang. The State Police investigation indicated that Mr. Hale was staying with Mr. Morales at the W. 6<sup>th</sup> Street address and had been present with Mr. Morales during the sale and delivery of controlled substances.

On November 4, 2006, Delaware State Police and Wilmington officers executed a search warrant at 1403 W. 6<sup>th</sup> Street, the known residence of Raul Morales and temporary residence of Derek Hale. Items recovered from the residence during the court-authorized search included: digital scales, 381 grams of cocaine, a 9 mm handgun, a .45 cal handgun, (2) .22 cal handguns, 1914 rounds of ammunition and 5 quarter sticks of dynamite. During the search, Mr. Morales was apprehended and arrested by police while delivering a controlled substance at a shopping center along Rt. 40. Derek Hale was present neither when Mr. Morales was arrested for delivery of the controlled substance nor when the search warrant was executed at 1403 W. 6<sup>th</sup> Street. His whereabouts were unknown until November 6, 2006. Other search warrants and arrests were executed during the same general timeframe involving members of the Pagan Motorcycle Gang.

Indictments were returned on November 13, 2006, charging ten individuals with various drug and weapons offenses. As the investigation progressed, a new set of indictments was obtained from the New Castle County Grand Jury on November 20, 2006. These indictments superseded or amended the charges from the November 13 indictments and charged racketeering and related drug and weapons violations involving a total of 32 individuals. Derek Hale was listed as an unindicted conspirator in these indictments that were returned after his death.

Prior to the indictments of November 13 and November 20, the Delaware State Police were in the process of searching for an associate of Mr. Morales, a member of the Pagan Motorcycle Club of Virginia who had constantly been seen with Mr. Morales the preceding week. State Police had identified the subject as Derek Hale, driving a blue Neon with Virginia tags, and had information that he was known to carry firearms.

On Monday, November 6, 2006, Delaware State Police investigators received information that Mr. Hale was at the 1403 W. 6<sup>th</sup> Street residence of Mr. Morales. Delaware State Police contacted the Wilmington Police Department Vice Unit and requested the Unit set up surveillance on that location while State Police Detectives began to prepare search warrants for the car and residence as well as arrest warrants for Mr. Hale. The arrest warrants charged two counts of trafficking in cocaine, one count of second degree conspiracy, one count of

---

<sup>3</sup> National Drug Intelligence Center, Drugs and Crime: Outlaw Motorcycle Gang Profile, Pagan’s Motorcycle Club, <http://cryptome.org/gangs/pagans.pdf> (last visited Jan. 22, 2007).

maintaining a dwelling and vehicle for keeping controlled substances, and one count of possession with the intent to deliver. These charges stemmed from activity that occurred on or about November 1 through November 4, 2006.

Lt. Ogden of the Delaware State Police spoke with Lt. William Browne of the Wilmington Bureau of Police regarding the surveillance request. Lt. Ogden informed Lt. Browne that guns and drugs had been recovered from 1403 W. 6<sup>th</sup> Street during the earlier raid of the residence, Mr. Hale was a member of the Pagan Motorcycle Club and, Mr. Hale had been known to carry firearms.

At approximately 3:00 pm, Lt. Ogden contacted Lt. Browne. He informed Lt. Browne that his detectives were preparing arrest warrants for Mr. Hale as well as search warrants for the blue Neon and 1403 W. 6<sup>th</sup> Street. Lt. Ogden also requested the assistance of the Wilmington Police Department Vice Unit to establish surveillance on the subject and, if necessary, to arrest him if he tried to leave before the State Police arrived with the warrants.

Lt. Browne summoned his officers and had them take up positions near the target residence at 1403 W. 6<sup>th</sup> Street. Several officers parked on surrounding streets while other officers in undercover capacity started surveillance on the residence. Detectives from the Delaware State Police and officers from the Governor's Task Force began to arrive near the target location.

A surveillance officer reported that a woman with two children, a boy and a girl, pulled up in a Volvo and parked in front of the residence. The woman and children exited the vehicle and went behind the residence. Shortly thereafter, they returned to the front door which was opened by Mr. Hale. Mr. Hale and the woman were observed loading items from the house into her car. The children at this time were in the Volvo. Mr. Hale was then observed sitting on the steps in front of the residence.

Lt. Ogden drove past the residence and observed the Volvo with the two children inside. He recognized the young boy as Mr. Morales' son. He also recognized the Volvo as belonging to [REDACTED]

Lt. Browne and Lt. Ogden discussed the procedure to be used to approach and apprehend the subject. It was agreed that an attempt should be made to arrest Mr. Hale while he was still on the street outside of the residence rather than when he went back inside the residence where he could possibly barricade himself. Officers did not know whether anything had been taken into the residence since the November 4 search during which guns, drugs, ammunition and dynamite had been removed from the house. It was also decided that it was safer to approach the subject on the street than allow him to get into a vehicle and possibly precipitate a vehicle chase through the city streets.

Lt. Browne was advised by surveillance officers that Mr. Hale was now sitting on the front steps leading up to 1403 W. 6<sup>th</sup> Street. Lt. Browne, aware that the State Police were preparing felony warrants for Mr. Hale and in conversation with Lt. Ogden, decided to take the subject into custody while he was still out in front of the residence.

Once the street was clear of normal vehicular traffic and pedestrians, officers converged in front of 1403 from both directions on W. 6<sup>th</sup> Street. There were a total of 14 officers who arrived on the scene. The majority of these officers witnessed all or part of the incident. They heard numerous commands given to Mr. Hale to take his hands out of his pockets, observed the Taser discharge, observed Mr. Hale's demeanor, actions and reactions, and observed the fatal shots. In addition to the officer witnesses, there were 13 civilian witnesses in the area who were located and interviewed. The majority of those witnesses were also in a position to see the incident as it unfolded. A door-to-door canvas for witnesses was conducted by the police. In addition, flyers were placed throughout the neighborhood asking any witnesses to come forward.

When Lt. Browne gave the order to move in, he and several other officers took up positions at the front of the residence, parking their cars in the street in front of 1403. Apparently, just prior to the police arrival, both children had exited the car. The boy went up the steps to retrieve his Xbox from the house and the girl played or ran around in the area of the steps of the adjoining house.

Lt. Browne arrived on the scene in plain clothes but wearing a tactical vest that carried his equipment and was marked on the front and back with the word POLICE. Lt. Browne initially positioned himself in the area near the bottom of the steps at 1403. He then moved somewhat to the left near the front of Mr. Hale's car facing the steps. Two detectives were positioned to his left and two other officers were positioned farther to his right. These officers were closest to the subject. Other officers took up positions where cover was available, i.e., behind parked cars or the side of the building, to contain the scene and keep innocent people out of the immediate area. When the officers exited their vehicles and approached the front steps, [REDACTED] was on the sidewalk in front of the residence. A detective took custody of her and moved her to safety across the street behind a car.

1403 W. 6<sup>th</sup> Street is a row home located near the middle of the block between Broom and Rodney Streets. A series of ten steps lead up from the sidewalk to an enclosed porch area with a white door. As you face the steps, a driveway is on the left side leading to a garage under the porch area. On the right side facing the steps is a two-tiered block planter/retaining wall, the first level extending from the sidewalk up to the area of the fourth step and the second extending from a set back at the fourth step up to the area of the eighth step. There are flowers and shrubs planted on these two tiers. This planter/wall separates the front area of 1403 from the attached residence at 1401.

When the police arrived, Derek Hale was sitting on the ledge on top of the block retaining wall in the area near the eighth step up from the sidewalk with his legs dangling from the ledge to the steps. He was wearing a dark colored hoodie with a pocket in the front and was engaged in conversation with a woman who was standing on the steps with her son. When the officers approached Mr. Hale, he remained seated and refused to take his hands out of his pocket. Lt. Browne and another officer identified themselves as police officers. Both were wearing vests marked POLICE on the front and back.

Several officers gave numerous loud commands to Mr. Hale, such as "take your hands out of your pockets," and "show us your hands." According to witnesses, Mr. Hale failed to reply or respond in any way to these verbal commands. One witness, who was in the doorway of the house, stated that during the Tasing and amid the shouted commands from the police, she heard Mr. Hale make a comment in a low raspy voice that he was trying to take his hands out of his hoodie. She also reported that she told the police he could not get his hands out of his hoodie. Based on her statements, it does not appear that any of the other witnesses could hear him. None of the police or other witnesses present remarked about hearing any statements from Mr. Hale or her that he was unable to remove his hands from the hoodie. If the statement was made by Mr. Hale, it was not true as demonstrated by the fact that he subsequently stood up and took one hand out of the hoodie and pulled out a Taser probe.

Again, according to witnesses, Mr. Hale made only one comment prior to the time he was first Tasered: "not in front of the kids or get the kids out of here." He refused to remove his hands from his pocket and it was unknown if he possessed any type of weapon. [REDACTED] was ordered by the police to go inside the house. She initially complied, taking her son with her. Police officers removed [REDACTED] from the sidewalk area in front of 1403 to safety across the street and behind a vehicle. After numerous voice commands to remove his hands from his pockets, and his failure to do so, Mr. Hale was warned that he would be Tasered if he did not comply. Officers then attempted to force him to comply by use of the non-lethal Taser.

As is customary, when an officer in this type of situation uses a Taser and another officer is available, the second officer will provide "cover" with his service weapon. This is because the officer using the Taser would not have time to draw his service weapon in the event the situation escalates or the Taser malfunctions.

Lt. Browne had informed the officers with the Tasers that he would provide "cover" for them and had drawn his .40 caliber handgun to cover the subject. Other officers at the scene also had drawn their handguns and were covering the subject. All of the officers were clearly visible from Mr. Hale's position, yet he displayed no emotion and failed to comply with numerous orders to show his hands.

The officer standing near Mr. Hale's car, which was parked to Mr. Hale's right in the driveway of the residence, fired his Taser at him. That officer administered four separate five-second duration discharges of the Taser. The Taser appeared to have some affect as Mr. Hale would tighten up and quiver. He would, however, regain his composure when the charges stopped. He continued to refuse to comply with the orders to show his hands. Shortly after that officer fired his Taser, another officer positioned to the right of the steps on the opposite side of Mr. Hale, fired his Taser. That officer believed that one of the probes or darts from the first Taser fired had missed the target and that was why Mr. Hale was not reacting to the Taser properly.

This second officer, based on his experience and training, stated that Mr. Hale did not react to the first Tasing in a normal fashion. Mr. Hale failed to comply with the orders to show his hands, and had no real emotion in his face, just a "blank" stare. This second officer administered three separate discharges of current within the same timeframe as the first officer.

The time between the first Taser discharge and the last Taser discharge was approximately one minute and 13 seconds.

Eyewitness accounts describing Mr. Hale's shaking and convulsions indicate that the Tasers operated successfully at least part of the time; however, it could not be determined to which Taser charge Mr. Hale was reacting. Moreover, the officers reported that Mr. Hale's overall reactions and responses were not typical. Mr. Hale, who was still sitting down, rolled onto his back but sat back up when the current ceased. He again went onto his side and back. At this time, the door to the residence was opened by [REDACTED] and a dog ran down the steps, appearing to become entangled in the Taser wires from one of the weapons. It was believed that the dog dislodged the wire or probe. The officer to the right of the steps commented that his Taser was not having the proper affect on Mr. Hale. Therefore, he began to remove the cartridge from his Taser and reload a fresh one. As he did so, Mr. Hale stood up diagonally, facing Lt. Browne and the officer to the Lieutenant's left. According to several witnesses, Mr. Hale pulled at the wires and probes from the Tasers in his chest area with his right hand. Although there were a number of Taser prongs discharged by two different officers and the Tasing may have appeared excessive to a layman, the purpose of the Tasing was to overcome Derek Hale's resistance to the arrest so he could be taken into custody without injury to himself or to the officers.

After Mr. Hale stood up, pulled out the prongs and threw them down, he turned slightly towards the officer to the right of the steps in a threatening manner. As he did so, his left hand was still concealed in the front pocket of his "hoodie." Witnesses stated that it appeared that he was either holding something or moving something around in the pocket of his hoodie. According to witnesses, these actions were in one continuous motion.

The officer, who was in the process of reloading his Taser and did not have his service weapon drawn, believed that Mr. Hale had a gun in his pocket when Mr. Hale turned toward him. In fear for his life, the officer dropped his Taser and dove for cover behind the retaining wall. Based on background information and Mr. Hale's actions, it was Lt. Browne's opinion that when Mr. Hale, with his hand still in his pocket, turned towards the officer with the Taser he was about to inflict death or serious injury to that officer or to one of the other officers. Lt. Browne was aware of the background of the investigation, the recent arrests of other Pagans and the general reputation of members of the Pagans Motorcycle Gang, and their involvement in drug distribution and possession of weapons. As explained previously, it had been only two days since a search at this same location resulted in the seizure of 381 grams of cocaine, 4 handguns, ammunition and dynamite. It was unknown to anyone whether any new contraband had been brought into the house. Lt. Browne had received information that Mr. Hale was a known member of the Pagan Motorcycle Gang, had been known to be armed in the past, and that felony warrants were being prepared for Mr. Hale's arrest. All of the above, coupled with Mr. Hale's demeanor at the time of the confrontation, his unresponsiveness to the officers and blank stare, his actions of pulling out the Taser wires, his refusal to remove his hand from his front pocket, and his threatening movement toward the officer nearest him caused Lt. Browne to perceive him as a threat. He thus directed deadly force to protect the officer from Mr. Hale.

Lt. Browne, in fear for his own life, as well as the life and safety of his fellow officers, fired three rounds from his service weapon, striking and killing Mr. Hale. A second officer on the scene and in the area of the steps advised that he was preparing to discharge his firearm in reaction to what he perceived as life-threatening actions from Mr. Hale when Lt. Browne discharged his weapon.

After the shooting, an autopsy was conducted by the State Medical Examiner's Office. During the autopsy, it was noted that Mr. Hale was wearing a tee shirt with a sweatshirt over top of it, a jean jacket with Pagan logos on top of the sweatshirt and a dark hooded sweatshirt over top of the jean jacket. One Taser dart without wires was lodged in the jean jacket and two Taser darts without wires were lodged in the hooded sweatshirt. There was no indication that the darts directly contacted with Mr. Hale's skin. This may explain Mr. Hale's failure to react to the Taser in the normal fashion.

Many times discrepancies in eyewitness statements can be found especially given the number of witnesses, location of the witness to the incident, their background, and their own perception or interpretation of what they see.

Nevertheless, all witnesses reported that the police shouted numerous commands, such as, "show your hands," and "take your hands from your pockets." These commands were given loudly by several of the officers at the scene and were heard at the end of the block by some witnesses. All stated that Mr. Hale failed to comply with the orders. Many saw him stand and remove the Taser wires/probes from his shoulder. Some witnesses used descriptions such as "wires", "Taser," or "prongs." Regardless of their descriptors, they saw him pull something from his front and throw it down. All stated that he did not take both his hands out of the pocket of his "hoodie."

Although the officers were in plain clothes, five of the civilian witnesses described the police as wearing vests or jackets with the word POLICE on them. Two mentioned badges or shields displayed on the officers. Other civilian witnesses did not recall seeing the badges or vests, or only saw them from the back.

### CONCLUSION

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, Lt. William Browne's use of deadly force was not a criminal act because the use of such force was justified in this case. Section 465 of Title 11 of the Delaware Code generally defines the legal use of force for the protection of other persons. It provides, in pertinent part, that "[t]he use of force upon or toward the person of another is justifiable to protect a third person when: (1) The [officer] would have been justified under § 464 of this title in using such force to protect [another person] against the injury the [officer] believes to be threatened to the person whom the [officer] seeks to protect; and (2) Under the circumstances as the [officer] believes them to be, the person whom the [officer] seeks to protect would have been justified in using such protective force; and (3) The [officer] believes that intervention is necessary for the protection of the other person." Additionally, the use of deadly force is justifiable if the officer

using such force believes that it is necessary to protect a third person or persons from the threat of death or serious physical injury. Therefore, under Delaware Law, it is Lt. Browne's subjective state of mind which is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Lt. Browne actually believed at the time that he intentionally fired his weapon such action was necessary to protect another officer from death or serious physical injury so long as Lt. Browne 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.

In this case, several clearly-identifiable police officers initially arrived at the scene and attempted, by a show of numbers and numerous commands, to get Mr. Hale to take his hands out of his pocket. Mr. Hale failed to comply and the police elevated the level of force by employing Tasers. Again, Mr. Hale failed to comply.

At the time Lt. Browne fired his weapon, Mr. Hale, who had ignored numerous commands to remove his hands from his pocket and been Tasered as a result of his non-compliance, continued to keep his hand in his pocket as if holding a weapon and was turning in a threatening manner toward a nearby officer armed with an empty Taser. That officer clearly believed he was in immediate danger and, thus, began an evasive move. Lt. Browne believed that the use of deadly force was immediately necessary to prevent serious injury or death to that officer. The investigation of the facts and circumstances fully support the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Lt. Browne's use of deadly force was justified and is not subject to criminal prosecution under Delaware law.