

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

SUBJECT: YAHIM HARRIS

OFFICER: JAMES MACCOLL

DATE OF INCIDENT: FEBRUARY 2, 2019

Dated: November 4, 2019

Scope of the Investigation

This is the final report of the Delaware Department of Justice, Office of Civil Rights and Public Trust, arising out of the investigation of the use of deadly force by Senior Corporal James MacColl against Yahim Harris (referred to hereinafter as “Mr. Harris”). The Office of Civil Rights and Public Trust reviewed evidence consisting of interviews of civilian witnesses, interviews of police witnesses, scene photos, 911 recordings, dispatch records, video footage, police reports, medical records, and the ballistics report. 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

On February 2, 2019 at 6:28 AM, a 911 call was placed by Witness 1 (hereinafter “W1”), who reported an armed carjacking. According to the statement of W1 during the 911 call, two black male subjects wearing face masks, black hoods and black pants put a gun to W1’s head in front of W1’s house and told W1 to “move.” They then stole W1’s vehicle, a white Toyota Camry. W1 got into another vehicle driven by Witness 2 (hereinafter “W2”), together they chased the vehicle stolen from W1. This call was relayed to officers, including the fact that the suspects were armed. The 911 caller specifically stated “They put a gun to me.”

In the area of 24th and Tatnall Street, Corporal MacColl observed the stolen vehicle with two black male subjects inside. Those two subjects were later identified as Yahim Harris as the driver and a juvenile¹ (hereinafter “Suspect 2”) as the passenger. Near the same intersection, Corporal MacColl observed another vehicle, with W1 inside, pointing to the white Toyota advising that it was W1’s car. Corporal MacColl followed the stolen vehicle, which proceeded east on West 27th Street, and then pulled over to the curb. Corporal MacColl had not activated his emergency lights to prompt the stop.

¹ This Office has elected not to name the juvenile subject involved in this incident, as his name has not been previously released. This individual was prosecuted in Family Court for events related to this incident, as such, the Office has utilized “Suspect 2.”

After the car came to a stop, Corporal MacColl activated his emergency lights and exited his vehicle. Once outside his patrol vehicle, Corporal MacColl began issuing commands to the occupants to stay inside the vehicle. W1 and W2 were parked behind Corporal MacColl's vehicle. After a few moments, Mr. Harris opened the driver's door of the vehicle and then exited. He began running northbound across West 27th Street, and as he was running he looked back towards Corporal MacColl and extended his left arm towards him with an object in his hand.

Corporal MacColl fired his service weapon at Mr. Harris, striking him approximately twice in the upper left torso. After being struck, Mr. Harris continued running into an alleyway adjacent to 3 West 27th Street. As this happened, Suspect 2 exited the vehicle, grabbed at his waistband and then raised his arm towards Corporal MacColl. Patrolwoman Angeline DiFebo (hereinafter "Officer DiFebo") arrived nearly simultaneously, and Suspect 2 then crouched down next to the vehicle. Officer DiFebo promptly placed Suspect 2 into custody. A .38 caliber Ruger LCR revolver, loaded with five rounds was located under the vehicle, between the front and rear passenger doors, next to Suspect 2.²

Corporal MacColl proceeded into the alley where he last saw Mr. Harris running. Mr. Harris was on the ground but due to the low light in the early morning Corporal MacColl could not see his hands. Corporal MacColl issued a command to Mr. Harris to show his hands, and he complied. Other officers arrived and began assessing Mr. Harris' injuries. A black cell phone case and two spent projectiles were observed on the ground next to Mr. Harris. Inside of the stolen vehicle, two cell phones were located.

Police Witnesses:

Officer DiFebo's Statement:

Officer DiFebo of the Wilmington Police Department was interviewed in connection to this case. She stated that she received the dispatch regarding an armed carjacking and responded to the area. She was listening to the updates being provided by Corporal MacColl over the radio; he advised he was behind the vehicle near the intersection of 27th and Moore Street. She pulled her vehicle westbound onto 27th Street, with her patrol vehicle facing the stolen vehicle and Corporal MacColl's vehicle. As she was getting out of her patrol vehicle, she saw the driver open his door and begin to run. She recalls that it was still dark, with Corporal MacColl's vehicle overhead lights providing illumination of the area. She saw the driver (Mr. Harris), turn towards Corporal MacColl as he was running away towards the alley. She then heard Corporal MacColl fire his weapon; she could not see Mr. Harris' hands as he ran away.

² A National Criminal Information Center search discovered that this firearm was reported stolen from Chester City, Pennsylvania.

As this happened, she moved towards Corporal MacColl and ordered Suspect 2, who had by this time exited the vehicle and was crouched down next to it, to the ground. Corporal Brown also arrived, and assisted her in securing Suspect 2. She did not see the gun underneath the vehicle when she took him into custody, but added she was not looking for anything.

Corporal Correy Brown's Statement:

Corporal Correy Brown (hereinafter "Corporal Brown") of the Wilmington Police Department was interviewed. Corporal Brown heard the dispatch for an armed carjacking and responded. He heard Corporal MacColl giving updates over the radio; specifically that the stolen vehicle had stopped at 27th and Moore Street. Corporal Brown pulled westbound onto 27th Street, his patrol vehicle was facing the stolen vehicle and Corporal MacColl's vehicle. He heard Corporal MacColl indicate over the radio "shots fired" as he was pulling up. He saw Corporal MacColl facing down the alleyway and Officer DiFebo holding another suspect at gunpoint. He went to assist Officer DiFebo with securing Suspect 2.

After Suspect 2 was secure, Corporal Brown went to assist Corporal MacColl, approaching the driver, Mr. Harris, in the alley. Corporal Brown saw Mr. Harris laying on the ground and heard him saying that he had been shot. Corporal Brown rolled Mr. Harris over and observed gunshot wounds to his left torso. A projectile also fell from Mr. Harris' clothing to the ground. Corporal Brown observed a black cell phone case in the snow. Corporal MacColl asked him if it was a gun, and when he told him it was not, Corporal MacColl responded, "shit." Corporal MacColl also advised him that Mr. Harris had turned towards him as he was running. Corporal Brown administered first aid to Mr. Harris until EMS arrived. After Mr. Harris was removed from the alleyway, Corporal Brown located a second spent projectile on the ground.

Primary Officer Interview:

Senior Corporal James MacColl:

Corporal MacColl was interviewed regarding his involvement with this matter. On February 2, 2019 he was on day patrol, in full uniform and operating a fully marked Wilmington Police vehicle. That morning he had attended pre-shift roll call where officers are updated on cases and given new information. That morning, information was given out regarding stolen vehicles being used in shootings. After roll call, Corporal MacColl began patrol. Soon after, he heard a call for an armed carjacking that occurred in the block of West 31st Street. The suspects were described as two black males wearing masks and hoodies. Corporal MacColl recalled that dispatch advised that a gun was put to the victim's head.

The stolen vehicle was described as a white Toyota Camry with Pennsylvania registration. As he made his way to the area of the carjacking, he observed the vehicle travelling northbound on Tatnall Street. Corporal MacColl, in a marked Wilmington Police Department

patrol car, began to follow the vehicle, travelling westbound on Market Street. He observed a vehicle with W1 and W2 inside yelling and pointing at the vehicle and advising that it had been stolen. Corporal MacColl was radioing updates to dispatch as he followed the vehicle. He stated that because he had no back up, he did not attempt a vehicle stop and did not activate his emergency lights.

At the intersection of 27th and Moore Street, the stolen vehicle pulled to the curb unprompted. After the vehicle came to a complete stop, Corporal MacColl activated his emergency lights and stopped his patrol car behind them. He observed two subjects inside the vehicle. They appeared to be talking to one another. He said he exited his patrol vehicle, drew his firearm and began to loudly issue commands to the occupants to stay inside the vehicle. Neither subject exited the vehicle and he observed no reaction. Corporal MacColl explained to investigators that he was waiting for backup before approaching because dispatch had advised the subjects were armed with a firearm.

He observed the driver side door open, and after a momentary delay, the driver exited and began running northbound across the street in front of him. Corporal MacColl told investigators this was unusual. He explained that in his experience, if an occupant is going to flee, they do so as soon as, or even before, the vehicle stops, rather than waiting. He observed the driver running and turning his upper torso and extending his left arm towards him, with a black object in his hand. Corporal MacColl also indicated that it was still dark in the early morning and he had his vehicle's emergency lights on to help illuminate the area. He believed the suspect had a firearm and was going to fire at him as he ran. He said he was aware that W1 and W2 were parked behind him, and therefore also in the potential line of fire.

Corporal MacColl discharged his service weapon and observed the suspect run into the alley after being shot. He was unaware if his shots struck the subject as he saw him disappear around the corner. Corporal MacColl turned back to the vehicle to determine the location of the passenger but saw Officer DiFebo arrive and directed her to deal with the passenger as a remaining potential threat. Corporal MacColl then went to the alleyway and could hear Mr. Harris moaning. He turned on his flashlight and observed Mr. Harris on his side, but could not see his hands. He ordered Mr. Harris to show his hands and he complied. Corporal Brown arrived shortly thereafter and assisted Corporal MacColl with taking Mr. Harris into custody. As they were taking him into custody a black cell phone case fell to the ground. According to Corporal MacColl, while they were rendering first aid to Mr. Harris, he asked "Why did you shoot me? I didn't have the gun anymore."

Corporal MacColl advised he has been in "conservatively, dozens of foot chases." He went on to state he "never had somebody point at me while they were running from me." According to Corporal MacColl, he could not make out what the object was, however based on the information given to him that Harris had put a gun to the victim's head, he thought the object

in his hand was a gun. Additionally, Corporal MacColl articulated concern for the lives of W1 and W2, who he knew to be behind him and potentially in the line of fire.

Civilian Witnesses

Witness 1:

W1 was interviewed in connection with this case. This witness advised that while they were warming up their vehicle in the early morning, a black male wearing a black or dark blue coat and hoodie stuck an object in W1's right side and said, "move." During a subsequent interview, W1 said they did not see a gun, only felt it, and that it was put to their side, not head. In the 911 call, W1 stated a "They put a gun to me." The dispatcher asks, "They put a gun to your head?" and W1 answered "Yes." Additionally, during the 911 call, W1 stated that there were "two black males" involved. During the subsequent interview, W1 clarified they did not observe a second subject until they saw him in the vehicle. W1 identified the driver, Mr. Harris, as the subject with the gun who was later shot by police.

W1 went into the residence after the carjacking and retrieved a cell phone. W1 then left the house with W2 driving in order to look for the stolen vehicle. W1 then placed the 911 call and provided updates to police dispatch regarding the location of the stolen vehicle. At 24th and Tatnall Street, W1 observed a police officer and began pointing to the stolen vehicle so the officer would follow it. After the stolen vehicle pulled to the curb on 27th Street, W1 advised they parked behind the police vehicle.

W1 could hear the Officer giving commands, but could not make out exactly what was being said. W1 then observed the driver get out of the stolen vehicle, and the officer fired approximately two to three times. W1 could not see the driver's hands as he was running.

Witness 2:

W2 was also interviewed in connection with this case and advised that W1 advised their vehicle had been stolen. Both witnesses got into W2's car to look for the stolen vehicle. They located the stolen vehicle within about 10 minutes and began providing updates to police dispatch. W2 observed two subjects inside the stolen vehicle. W2 said that in the area of 24th and Tatnall Street they saw a police officer and flagged him down to indicate that the vehicle they were following was stolen.

The police vehicle began following the stolen vehicle, turning onto West 27th Street with W1 and W2 immediately behind. W2 saw the officer activated the emergency lights and got out of the police vehicle and began issuing commands to the subjects in the stolen vehicle. W2 said that a few seconds after, the driver of the stolen vehicle exited and began running towards the alley. At that point, the officer fired at the suspect. W2 did not observe anything in the hands of

the driver and was not able to hear any commands being given because they remained in the vehicle.

Other Witnesses:

Officers conducted an area canvassed for other possible witnesses. No other witnesses to the stop nor the shooting were located, although many witnesses heard shots.

Suspect 2:

Suspect 2 was the juvenile passenger in the stolen vehicle, and was interviewed in connection with this investigation. A first interview was attempted with Suspect 2 at 2:00 p.m. on the same day of the shooting, but Suspect 2 appeared to be under the influence of an unknown substance, so it was discontinued. A second interview was conducted later that day, when Suspect 2 no longer appeared to be disoriented or under the influence and agreed to speak after being issued *Miranda* warnings.

Suspect 2 indicated he was not aware the vehicle was stolen when he got in and that he was merely getting a ride to school.³ Suspect 2 also denied having anything to do with a carjacking and that he was picked up by the driver only ten minutes before the car stop. According to Suspect 2, after the car stopped, he told Mr. Harris not to run, but he did anyway. Suspect 2 knew that Mr. Harris had been shot by police and stated that Mr. Harris was only running away and does not know why he would have been shot. Suspect 2 also denied having a gun. However, when told that police had found a gun under the stolen vehicle, Suspect 2 said, "Y'all found it?"

Yahim Harris:

Mr. Harris, the driver of the stolen vehicle, was interviewed at Christiana Hospital in connection with this case. This interview was conducted the day after the shooting, and police confirmed with hospital staff before the interview that he was not on any medication that would interfere with his understanding. Hospital staff indicated to police that he was only being given Tylenol.

After *Miranda* warnings, Mr. Harris agreed to speak with police about the incident. He denied being the driver of the vehicle, stating he was a backseat passenger. Mr. Harris said he did not know any of the other people in the vehicle. Mr. Harris said he ran because he was on probation and did not want to be violated. He told investigators he had a cell phone in his hand as he ran and denied hearing any commands from Corporal MacColl. Mr. Harris told investigators he was shot as soon as he exited and did not believe he made it to the alleyway.

³ It should be noted, February 2, 2019 was a Sunday, not a weekday.

Mr. Harris denied being involved in the carjacking. However, he admitted he knew of the gun in the vehicle. He described the gun accurately and admitted that he may have held it at one point.

Physical Evidence

Surveillance Video:

A surveillance camera was located from a local business near West 27th and North Market Street with the camera pointed down West 27th Street towards the intersection of West 27th Street and Moore Street. The video shows the stolen vehicle pulling to the right shoulder with Corporal MacColl in his police vehicle pulling behind shortly thereafter. Corporal MacColl activates his emergency lights and exits the vehicle. There was no immediate response from anyone in the stolen vehicle.

After a moment, the video shows both the driver's door and passenger side door open simultaneously. The video then shows Mr. Harris exiting the vehicle and running across the street towards the alleyway. Mr. Harris turns his upper torso backwards towards Corporal MacColl and extends his left arm straight out, while running. Corporal MacColl fires his service weapon and Mr. Harris runs into the alleyway.

While this is occurring, Suspect 2 is shown on the video exiting the passenger side of the vehicle. Suspect 2 reaches into his back waistband and then turns towards Corporal MacColl and extends his arm towards Corporal MacColl while he is focused on Mr. Harris.⁴ When Officer DiFebo arrives, Suspect 2 crouches down next to the vehicle. Officer DiFebo approaches Suspect 2 and the video shows him being detained. The video shows Corporal MacColl cautiously make his way to the alley where Mr. Harris ran, specifically, he appears to pause at the entrance to the alley. Corporal Brown follows Corporal MacColl into the alleyway to assist

Fingerprint Analysis:

The stolen vehicle and the recovered cell phones were dusted for fingerprints. One of the cell phones had latent prints recovered, but no match was made. Additional latent prints were discovered on various areas of the interior of the vehicle, no matches were made from these either.

DNA Testing:

DNA testing was conducted on the recovered firearm, comparing swabs from the firearm to DNA from both Mr. Harris and Suspect 2. The DNA from the firearm was consistent with a

⁴ The behavior of Suspect 2 is concerning. While all Officers were focused on Mr. Harris, Suspect 2 was closer to the recovered weapon, appeared to reach into his back waistband when exiting the vehicle and then extended his arm towards Corporal MacColl. It is unclear from the video whether there was any object in his hand at this time.

mixture of three or more individuals, however no conclusions could be drawn in reference to the DNA of either Mr. Harris or Suspect 2.

Medical Report:

Mr. Harris had four gunshot wounds. According to the medical records an entrance wound was located on his middle left side torso, below his armpit. He also had a gunshot wound to his upper left side torso, directly below the arm pit, another on his upper left side of his chest, and another in the middle left side of his chest. The wounds being on Mr. Harris' left flank, and below the armpit, suggest that his body was bladed towards Corporal MacColl at the time of the shooting and that his arm was raised. The location of the wounds, and specifically the one entrance wound that could be identified, corroborate Corporal MacColl's events.

Ballistics Report:

A ballistics test was conducted on the recovered firearm as well as Corporal MacColl's service weapon, comparing both to the recovered casings and projectiles recovered from the scene. Four casings and four projectiles were recovered. All four casings were confirmed to have been fired from Corporal MacColl's service weapon, a Smith & Wesson .40 Cal semi-automatic pistol.

Of the four projectiles that were located, two were found in the same alleyway where Mr. Harris fled. One was found on the sidewalk in front of 3 West 27th Street and the last was found embedded in a pillar on the front porch of 3 West 27th Street.⁵ The projectile found in the pillar of 3 West 27th Street and the two projectiles found in the alleyway were all found to have been fired by the same weapon, and all were .40 Cal. The caliber and rifling of the remaining projectile found on the sidewalk in front of 3 West 27th Street could not be determined. All projectiles were eliminated as having been fired from either the service weapon or the firearm recovered from underneath the stolen vehicle. While this expert report is inconsistent with the undisputed fact that Corporal MacColl fired his service weapon, the report speaks for itself. As there is no factual dispute that Corporal MacColl fired his weapon, this does not alter the legal conclusion.

Conclusion

The State must determine if the use of deadly force by Corporal MacColl against Mr. Harris is a criminal act. 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

⁵ The ballistics report incorrectly states this projectile was recovered from a pillar in the porch of 5 West 17th Street.

protecting the [officer] against the use of unlawful force by the other person on the present occasion.”⁶

Under Delaware law, the subjective state of mind of any person, in this case the law-enforcement officer, is the legal test to determine whether the use of force was legally justifiable against another person. The specific factual inquiry is two-pronged. The first question is whether the officer 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 the officer 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).

The facts known to Corporal MacColl, at the time he fired, include that an armed carjacking had just occurred. He did not know whether the driver or the passenger was in possession of the firearm, but did know from dispatch that a firearm was involved. He issued commands to stay inside the car, which were ignored. He saw the driver exit the vehicle and while he was running, he saw the suspect turn and extend his arm towards Corporal MacColl. He also saw a black object in Mr. Harris’ hand but due to the low light in the early morning could not make out exactly what that object was. He was also aware that W1 and W2 were parked behind him and therefore in the potential line of fire. These facts are corroborated by the surveillance video which shows Mr. Harris turning his torso towards Corporal MacColl and extending his arm in his direction prior to the shooting. Further the timing and position of Mr. Harris, as described by Corporal MacColl and seen in the surveillance video, are corroborated by the medical records.

It is not clear why Mr. Harris would have turned and extended his arm in the direction of Corporal MacColl if his intention was to flee from the car. Corporal MacColl specifically referenced this point in his interview, noting that in his experience as a police officer the flight from this vehicle was atypical from other foot chases. The wounds corroborate this information as well, with an entrance wound on Mr. Harris’ left flank below the armpit suggesting his body was turned towards Corporal MacColl and his arm was raised. Corporal MacColl’s cautious nature as he approaches the alley further suggests he believed Mr. Harris was armed. Lastly, a firearm was, in fact, located underneath the vehicle on the passenger side. Based upon this information, this Office determines that Corporal MacColl actually believed, at the time he fired, that the use of force was necessary to protect both himself and the civilian witnesses behind him.

⁶ Justification of use of force for the protection of other persons is also applicable, *See* 11 *Del. C.* § 465 “(a) The use of force upon or toward the person of another is justifiable to protect a third person when: (1) 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 (2) 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; and (3) The defendant believes that intervention is necessary for the protection of the other person.”

The second portion of the inquiry regarding the actions of Corporal MacColl requires a legal assessment as to whether he was reckless or negligent in forming the belief that force was immediately necessary. This Office determines that he was not. Corporal MacColl was aware that the suspects in the car were armed based on the 911 call. Relevant for this prong of the analysis, Corporal MacColl did not fire until Mr. Harris turned and extended his arm towards him. Corporal MacColl stated he did so to protect both himself and W1 and W2 who he knew to be behind him. Corporal MacColl fired in the belief that Mr. Harris was armed and was raising a weapon in his direction to shoot him. Unfortunately, there is no body camera footage, however, in this case, Corporal MacColl's recollection of events is corroborated by the surveillance video and the medical records. A firearm can be discharged within fractions of a second. Corporal MacColl's belief that a weapon was within that vehicle and his belief that both he and the civilians behind him were in danger at the time Mr. Harris raised his arm towards him, lead to the legal conclusion that he was not reckless in forming his belief that force was immediately necessary.

Based on the available evidence and the application of expert opinion to that evidence, we have concluded that it was objectively reasonable for Corporal MacColl to believe that the use of deadly force upon Mr. Harris was immediately necessary for the purpose of protecting both himself and the civilians directly behind him. For these reasons, the Department of Justice concludes the use of deadly force by Senior Corporal MacColl upon Mr. Harris does not constitute a criminal offense under the laws of the State of Delaware.