

FINAL REPORT OF THE DEPARTMENT OF JUSTICE
USE OF DEADLY FORCE BY WILMINGTON POLICE DEPARTMENT
SUBJECT: RICARDO B. HYLTON AKA RICARDO B. BROWN
OFFICERS: ANGELINE DIFEBO AND KEITH JOHNSON
DATE OF INCIDENT: AUGUST 30, 2019

Dated: August 10, 2020

Scope of the Investigation

This is the final report of the Delaware Department of Justice, Division of Civil Rights and Public Trust, arising out of the investigation of the use of deadly force by Officers Keith Johnson and Angeline DiFebo against Ricardo Hylton (referred to hereinafter as “Mr. Hylton”). The Division 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 Division 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 Friday August 30, 2019 at just after 7:00 P.M., Mr. Hylton was dropped off at 2710 North Washington Street by his friend. Mr. Hylton walked to a nearby pickup truck, a 2011 gray Chevrolet Silverado registered to him, and ripped off the side mirror. He then walked to the rear of the truck and fired a single shot from his handgun, striking the tailgate of the truck. He began yelling, saying “this is my voice” before firing an additional shot into the air. He then began walking north on North Washington Street, at one-point yelling and falling to the ground. While walking down the street he was pointing his handgun at multiple people, but there is no evidence he discharged the firearm at any of these people.

Officers Johnson and DiFebo were in the immediate area on an unrelated complaint when they heard gunshots. Calls also began coming into 911 to report the shots fired and Officers were advised by dispatch of gunshots in the area of 27th and Washington St. When they arrived to the intersection, three to four subjects advised them that a man in a white and blue shirt was firing a gun and directed them to go north on Washington St.

Officers Johnson and DiFebo saw Mr. Hylton crouched in the road, next to a silver vehicle parked on the east side of North Washington Street, just south of the intersection with 28th St. His back was to the Officers and he appeared to be addressing people on 28th St. Officer Johnson and Officer DiFebo were each operating their own fully marked Wilmington Police Department patrol vehicle. Officer Johnson stopped his vehicle approximately 20 yards from Mr. Hylton’s location, Officer DiFebo parked her vehicle behind Officer Johnson’s. Officer Johnson noted that Mr.

Hylton was wearing the white and blue shirt previously described by witnesses who directed them up North Washington St. Officer Johnson also observed that Mr. Hylton was holding a handgun in his left hand.

Both Officers Johnson and DiFebo were in their Wilmington Police Department uniforms and began issuing commands to Mr. Hylton to drop the firearm. Multiple witnesses confirmed hearing Officers issue the commands to Mr. Hylton. Hearing the command, Mr. Hylton turned to face the officers, simultaneously transferring the firearm to his right hand and positioned it down near his crotch. Officer Johnson and Officer DiFebo initially thought Mr. Hylton was going to comply with the commands to drop the weapon. After Mr. Hylton moved the firearm to his right hand, they witnessed him holding an unknown object in his left hand and that he was attempting to put same on top of the handgun.

Instead of dropping the firearm, both Officers and multiple witnesses observed Mr. Hylton raise the firearm and point it towards Officer Johnson and Officer DiFebo. One witness believed Mr. Hylton managed to fire a single shot.¹ Both Officers fired their handguns at Mr. Hylton, striking him numerous times. Officer Johnson fired seven rounds, Officer DiFebo fired six rounds. Immediately after the shooting, Officer Johnson and Officer DiFebo approached Mr. Hylton and began rendering aid. A black Glock Model 43 9mm pistol was recovered by Officer Johnson from Mr. Hylton. Due to the gathering crowd, Officer Johnson secured the firearm in a lockbox in his patrol vehicle and turned same over the Evidence Detection. Mr. Hylton was fatally wounded in the incident.

Police Witnesses:

Officers Johnson and DiFebo were the only Officers present for the situation. Their interviews are summarized below.

Primary Officers Interviews:

Patrolman Keith Johnson:

Officer Johnson of the Wilmington Police Department was interviewed regarding his involvement with this matter. On August 30, 2019 he was working patrol, wearing a Wilmington Police Department issued uniform and operating a fully marked Wilmington Police Department issued SUV patrol vehicle. He told investigators that he was in the area of 25th and Washington St with Officer DiFebo for a separate, unrelated investigation. As they were returning to their vehicles they heard several distinct gunshots nearby. They got into their respective vehicles and traveled north on Washington St. looking for the person who had fired. At the area of West 26th St some juveniles advised them that the shots were coming from up the street, north of their location. Officer Johnson radioed to dispatch the shots fired and dispatch

¹ This is partially supported by the existence of a single shell casing fired from the 9mm Glock recovered from Hylton. See below for the ballistics report summary.

advised that Shot Spotter had not recorded anything but that 911 calls were coming in for shots fired at 27th and Washington St. He said that when he got to 27th and Washington that three subjects were standing on the corner pointing north on Washington and said that someone in a blue and white shirt was shooting.

Officer Johnson turned north onto Washington at which point he observed Mr. Hylton on the east side of the street near the intersection of 28th St. He described Mr. Hylton as a black male subject in a blue and white shirt. He stopped his vehicle approximately twenty yards away from Mr. Hylton, who he recalled was wearing a blue and white shirt and who had his back to him. Officer Johnson parked in the southbound lane, the west side of the street, and observed Mr. Hylton hunched down near a silver vehicle with his back to him. Mr. Hylton was yelling at someone, but Officer Johnson couldn't understand him. As Officer Johnson exited his patrol vehicle he got a glimpse of a firearm in Mr. Hylton's left hand. The firearm was black, and Mr. Hylton was holding it by the slide, rather than the grip. After seeing the gun, and having heard the reports of shots fired, Officer Johnson drew his firearm.

Officer Johnson got out of the patrol vehicle and took cover near a red vehicle to his left. He said he took that position, both to provide cover for himself in case he was fired upon, but also so that in the event he had to fire his weapon he would not be shooting down the street. He began issuing commands to Mr. Hylton to drop the gun. He believed he said drop the gun more than five times and heard Officer DiFebo also issuing similar commands. Around the second or third time he issued the command to drop the gun Mr. Hylton turned and faced him and Officer DiFebo. Mr. Hylton also switched the gun from his left hand to his right hand, this time holding the firearm by the grip. The gun was at this time pointed down and was near his crotch. He was still holding another object in his left hand; Officer Johnson remembers it being small and shiny and believed it was a bullet.

Mr. Hylton was looking at Officer Johnson, and he believed Mr. Hylton was acknowledging their commands as he started to bend towards the ground. Officer Johnson told investigators that he thought Mr. Hylton was going to put the gun down and surrender and Officer Johnson told investigators he felt relieved. Instead though, he said that Mr. Hylton tried to put whatever the object was in his left hand onto the top of the weapon. Officer Johnson believed that Mr. Hylton was trying to load the gun from the top but could not do so because the slide on the gun was forward and the chamber was closed.

Officer Johnson said that Mr. Hylton then began slowly raising the gun and pointing it towards Officer DiFebo. He said he believed that Mr. Hylton was going to fire and feared that Officer DiFebo was going to be shot. Officer Johnson said that he believed Mr. Hylton raised the gun up to angle of approximately 45 degree when he began shooting at him. He also said he is not sure if he or DiFebo shot first but knows that they both fired at Mr. Hylton. Officer Johnson was asked about whether Mr. Hylton had fired at him or Officer DiFebo and he told investigators that he did not believe that Mr. Hylton had fired the weapon but is unsure. He said

that Mr. Hylton was gripping the firearm in the proper manner to fire, so it was possible, but he could not say for sure. Mr. Hylton was struck multiple times and fell to the ground and they stopped shooting.

Mr. Hylton fell on his back, with his hand gripping the firearm on his chest. Officer Johnson recalled Mr. Hylton continuing to move while on the ground and as Officer Johnson approached he continued to issue commands to drop the weapon. Mr. Hylton let go of the gun but did not move it from his chest. When Officer Johnson got to Mr. Hylton he kicked the weapon off of Mr. Hylton's chest and away from him. He also observed a loose magazine nearby on the ground. Assisting Officers began arriving and administering first aid. Officer Johnson saw the gun lying nearby and a crowd forming, so he grabbed the gun and secured it in a lock box in the trunk of his patrol vehicle. He believed he was wearing gloves when he picked up the weapon.

Patrolwoman Angeline DiFebo:

Officer DiFebo was interviewed in connection with this investigation and told investigators the following. She was working patrol on the afternoon into the night of August 30, 2019 in full Wilmington Police Department uniform and in a fully marked Wilmington Police Department SUV. She said that both she and Officer Johnson responded to the area of 25th and Washington Streets on an unrelated complaint when they heard what she believed to be fireworks. She said she checked her ShotSpotter app in case it was gunshots, but there were no alerts. She said that a car driving by stopped to alert them that someone was shooting. Both she and Officer Johnson got into their respective SUV's and began going north on Washington St. Dispatch advised 911 calls were coming in for shots fired at 27th and Washington Streets.

A group of males directed both Officers to go further up North Washington Street, and Officer DiFebo was following Officer Johnson. About halfway between 27th and 28th Streets on Washington, both Officers stopped their vehicles and exited. They had parked their vehicles in the southbound lane, the west side of Washington St. Officer DiFebo told investigators that upon exiting her vehicle she observed a black male wearing a white shirt to her right, on the east side of the street in the northbound lane in front of a vehicle, with a gun in his hand. He was holding the gun just below his belly button, pointed towards the ground. She drew her service weapon and began issuing commands to Mr. Hylton to "drop the gun" and could hear Officer Johnson doing the same. She believes she issued the command five to six times. Mr. Hylton turned and looked at them but did not appear to react.

She saw Mr. Hylton raise the gun up to his chest and it started to point out in her direction, and she thought he was going to shoot her or Officer Johnson. She told investigators that as Mr. Hylton was raising the weapon she was "one-hundred percent sure" he was going to fire the weapon at them. She said that she was in fear for her safety, the safety of Officer Johnson and the surrounding people when she fired at Mr. Hylton. She was aware that Officer

Johnson was also firing. Both her and Officer Johnson stopped firing when Mr. Hylton fell to the ground.

Both Officers approached Mr. Hylton, but he was still gripping the gun in his hand on his chest. They both issued additional commands to drop the weapon. Officer Johnson kicked the gun away and retrieved it and put it in his lockbox in his patrol vehicle. She began rendering aid to Mr. Hylton when other Officers arrived and relieved her.

Civilian Witnesses

Witness 1:

W1 was interviewed in connection with this case. This witness advised that s/he and their spouse were on the front porch of their residence when they heard booms, which they believed were fireworks. W1 stepped off their porch onto the street and saw the subject (Mr. Hylton) firing a gun into the air in a nearby parking lot. W1 told investigators that s/he believed the gun jammed because Mr. Hylton removed the magazine and was pulling on the slide. Mr. Hylton then began throwing the magazine into the air and catching it.

Shortly after, two males walked by W1 and W1 warned them to run. Mr. Hylton then pointed the firearm at the two males. W1 said Mr. Hylton was holding the gun in his left hand and the magazine in his other hand. W1 ran back into the residence and got her/his family members inside as well. W1 observed Mr. Hylton on his knees on the ground outside and yelling up to the sky. The firearm was on the ground next to him. Mr. Hylton then got up, put the magazine back into the weapon and got behind a nearby car. He was continuing to scream, but W1 could not make out what he was yelling.

W1 continued observing Mr. Hylton while her/his spouse called 911. W1 saw Mr. Hylton pointing the gun down at the ground when Officers arrived. W1 heard the Officers issue verbal commands at least three times to put the weapon down. W1 saw Mr. Hylton start to put the weapon down, but then he suddenly raised the gun up and pointed it in the direction of the Officers. W1 closed the door at that point, knowing what was about to happen, and then heard a number of gunshots. W1 said s/he thought it was possible that Mr. Hylton had fired at the Officers, but ultimately could not be sure. W1 told investigators that s/he believed that the Officers had “no choice” but to fire. W1 looked outside again, after the shooting stopped, and saw Mr. Hylton on the ground, still holding the gun. W1 saw one Officer come up and push the firearm away with his foot.

W1 told investigators that Mr. Hylton lived on that block and had never caused any issues. However, W1 heard the Mr. Hylton’s close friend had recently committed suicide.

Witness 2:

W2 was sitting at a picnic table located at an establishment on Washington Street, just north of 27th St. W2 saw the subject (Mr. Hylton) get dropped off at a parking lot and it appeared Mr. Hylton was going to enter a residence but instead he turned around and walked past W2. W2 observed Mr. Hylton approach a parked pickup truck and rip a sideview mirror off. He then walked to the rear of the truck and W2 heard a gunshot, after which Mr. Hylton raised his hands in the air and yelled, “this is my voice” before firing an additional three to four gunshots. W2 saw a black handgun in Mr. Hylton’s hand. W2 heard Mr. Hylton talking but could not make out exactly what was said.

At that point, W2, concerned for her/his safety, went inside and saw Mr. Hylton walking north on Washington St. From inside, W2 continued to observe Mr. Hylton, and watched him fire an additional round while walking up the street. W2 saw Officers arrive in two marked Wilmington Police Department SUVs near 28th St. W2 heard Officers repeatedly telling Mr. Hylton to “drop the gun” and “raise your hands.” W2 heard this command at least two to three times. W2 saw Mr. Hylton begin to bend over as if he was going to put the gun down, but then Mr. Hylton raised back up. W2 then heard eight to ten gunshots and saw Mr. Hylton fall to the ground. W2 saw an Officer approach Mr. Hylton and begin checking on him. At the time Officers fired, W2 could not see exactly what was in Mr. Hylton’s hands. W2 also added that s/he believed Mr. Hylton was attempting to catch the shell casings that were being ejected from the gun as he was firing.

Witness 3:

W3 said that s/he was home when s/he heard what s/he thought was either a gunshot or fireworks. W3 stepped outside her/his residence and saw a man (Mr. Hylton) up the street acting irrational and yelling. W3 saw Mr. Hylton walk up the sidewalk and saw a firearm in his hands. After seeing the weapon, W3 went back into her/his residence and saw from the window the police arrive. W3 could see the Officers exit their vehicles and take defensive positions. W3 could not see Mr. Hylton due to an obstruction and therefore did not witness what Mr. Hylton’s actions were immediately prior to the Officers firing. W3 heard the Officers issue multiple commands to drop the weapon and then heard the Officers firing.

Witness 4:

W4 was driving in her/his car on Washington Street, going southbound and turned onto 27th Street when W4 heard loud “pops”. W4 parked and exited her/his vehicle and saw a black male in a blue and white shirt (Mr. Hylton) on the ground, who then got up and started walking away from W4, north on Washington St. W4 then heard additional shots but did not see Mr. Hylton firing them. W4 did not see a firearm in Mr. Hylton’s hands but did see a holster on the ground near a truck parked on the street. W4 saw Officers arrive and exit their vehicle near the intersection of 27th and Washington Streets. W4 then went around the corner, out of sight, but

heard the Officers issuing commands to “drop the weapon.” W4 then heard two distinct “pops” again and then heard Officers fire. W4 believed the two distinct “pops” were from Mr. Hylton firing, because when the Officers fired, W4 could hear both guns firing simultaneously. W4 did not witness what occurred directly before the Officers fired.

Witness 5:

W5 was on her/his porch when s/he heard a gunshot. A neighbor came running down 27th Street saying that a man had exited a truck and was shooting into the air. A few minutes later, W5 heard two more shots which sounded closer to 28th St. W5 observed two police cars travelling on Washington Street towards 28th St. W5 heard the Officers giving commands to “put the gun down” and then heard a number of shots and saw people running. W5 never observed the situation directly but could hear what was going on.

Witness 6:

W6 was outside with W7 and was about to leave for work when they heard what they thought were fireworks. Two males went past them, and they appeared to be ducking or hiding. W7 got into her/his car and W6 went up onto her/his porch. W6 saw a male subject (Mr. Hylton) firing a weapon into the air. Mr. Hylton was standing near a gray car and turned and pointed the firearm at W6. W6 heard Mr. Hylton yelling but could not make out what he was saying.

W6 saw police arrive and believed Mr. Hylton was reloading his weapon. W6 heard the Officers giving commands to “put the weapon down” and then heard multiple gunshots. W6 did not observe what actions Mr. Hylton took immediately prior to Officers firing.

Witness 7:

W7 was inside a vehicle talking to W6 when W6 began yelling at W7 to get inside. W7 said they saw a man (Mr. Hylton) reloading a firearm. W7 looked out the window of the residence and saw Mr. Hylton kneeling on the ground. Officers arrived and W7 saw them fire but could not see what Mr. Hylton was doing. W7 did not hear any commands from inside of the residence. W7 did record the aftermath of the shooting, which is discussed below.

Witness 8:

W8 was standing outside and neighbors advised W8 to get inside because someone had a gun. W8 saw a male subject with no shirt on standing near a white van but could not see the subject’s hands. W8 saw Officers arrive on scene and draw their guns, and W8 went inside. W8 heard the Officers issuing commands to “put the gun down”. W8 then heard multiple gunshots and went back outside and saw the male subject on the ground. W8 did not hear any gunshots before the Officers arrived but did see the male subject talking to himself.

Witness 9:

W9 stopped at 27th and Washington after seeing some friends in the area. One of the friends advised W9 that someone was waiving a gun around. W9 observed a male subject (Mr. Hylton) walk up to a truck and rip the side mirror off. W9 started to walk to her/his vehicle but then Mr. Hylton went to the rear of the truck and fired a gun. Mr. Hylton was talking to himself and according to W9 he appeared to be “on something.” W9 ran back to a nearby residence and called 911 and spoke to a dispatcher. W9 relayed to dispatch that Mr. Hylton was wearing a blue shirt and had a gun. W9 heard Mr. Hylton fire the gun two more times before police arrived. W9 went to the back of the residence and did not observe any further interactions.

Witness 10:

W10 told investigators that they were with Mr. Hylton earlier in the day to buy a suit because one of their mutual friends had recently passed. W10 said they shared a beer with Mr. Hylton and that he appeared to be normal. They later went to El Diablo restaurant for dinner and afterwards W10 dropped Mr. Hylton off at his residence. Later that night W10 received a phone call that Mr. Hylton had been shot so W10 returned to Washington St. W10 was aware the Mr. Hylton had a permit to carry concealed and had seen him carrying a handgun on previous occasions.

During a follow up interview with investigators, W10 explained that Mr. Hylton was acting differently that day which is why W10 was spending time with him. He was going from one topic of conversation to the next and W10 told Mr. Hylton he needed to get some sleep. W10 asked Mr. Hylton if he was on medication and Mr. Hylton told him that he could not take any. While they were eating dinner at El Diablo, Mr. Hylton became upset regarding the saltiness of his food and W10 had to intervene to calm him down.

Witness 11:

W11 spoke to Mr. Hylton on the phone that day and he seemed to be fine. He was speaking about buying a house and his future plans. He told W11 he needed to go lie down and that he would be by later. W11 was aware that Mr. Hylton carried a gun, but advised investigators that Mr. Hylton was responsible with it. W11 only identified the gun as a “black” handgun.

Witness 12:

W12 had seen Mr. Hylton throughout the week since a mutual friend of theirs had recently committed suicide. W12 said Mr. Hylton was “very critical” of the way in which their friend took his life. W12 said that Mr. Hylton specifically referred to suicide as “cowardly.” W12 saw Mr. Hylton on August 30 earlier in the day, and the two made tentative plans to play cards later.

Other Witnesses:

Additional witness interviews were conducted and recorded but do not provide any additional details. Those witnesses did not hear or observe the interactions. Those witnesses also do not share any additional, pertinent details about the state of mind of Mr. Hylton that day.

Physical Evidence

Surveillance Video:

A surveillance camera was located from a local business near West 27th and North Washington Streets with the camera pointed north up Washington St. There is no audio, only video available from this camera. Hylton can be seen on the opposite side of Washington Street dressed in a blue tank top type shirt and white shorts with white shoes. Given the distance from the camera it is impossible to accurately identify what, if anything, was in his hands. A gray truck is parked on the opposite side of Washington Street, near the intersection with 27th Street, with its front end pointed north on Washington and its back end clearly visible on the surveillance camera.

In the first clip of video from the local business, Mr. Hylton can be seen in the upper right side of the screen, going to the back of the truck and facing it, with his back to the camera. It is unclear what he was doing at this point, but he was moving his arms and facing the rear of the truck. At one point he put his left arm straight up in the air. Given witness statements from W2 and W9 this action is consistent with his firing a weapon into the air. A white van approached, heading south on Washington Street and reached the intersection briefly obscuring Mr. Hylton from view. As the van pulled through the intersection Mr. Hylton can be seen facing the camera, apparently looking at the white van. He extended his right arm out towards the vehicle in a manner consistent with aiming a weapon towards the vehicle. Again, it is not clear what, if anything, was in his hands. He then turned and started walking north on Washington Street, out of view of the camera.

Mr. Hylton appears again on this surveillance camera approximately two minutes later, and this footage is preserved in a second video clip. Mr. Hylton was farther up Washington Street and continued walking north, away from the camera. He can be seen stopping intermittently and moving his arms. He stopped near a gray car and extended his right arm up towards a residence at one point. Again, it is unclear exactly what he was doing, but this action was consistent with aiming a firearm.

Mr. Hylton then continues walking north on the sidewalk and can be seen falling to his knees and then onto his back. He gets up a few moments later and continues walking north, out of sight. Approximately thirty seconds later a Wilmington Police Department SUV can be seen turning from 27th Street onto North Washington and heading north. Three men standing on the corner can be seen pointing north on Washington Street, directing Officers where to go. The

SUV's stop about halfway up the block, but the front of the vehicles is out of sight of the surveillance and nothing more can be seen.

Residential Video:

A private residential camera was pointed at the intersection of 28th Street and Washington Street. There is no audio, only video available from this camera. A group of juveniles can be observed standing near the intersection, looking south down Washington Street. They then turn and run away down 28th Street. On the other side of Washington Street, on 28th Street, a group of individuals can be seen fleeing into a residence. Two male subjects walking north on the opposite side of Washington Street turn and look back and can then be seen ducking. After a few minutes a large group of people began congregating at the intersection, looking south on North Washington. An Officer can be seen walking in the street towards the crowd, presumably to secure the scene.

Other residences were equipped with video surveillance, some through the Ring system, but those systems did not record the incident since they were not set up to continuously record or store video.

Cell Phone Video:

A witness took three videos on their cell phone, however only the first two are relevant. The third video shows additional police responding after the incident. The first video shows Mr. Hylton walking northbound on Washington Street. He is wearing a blue tank top type shirt, white shorts and white shoes. Mr. Hylton was near a white vehicle, fell to his knees and threw both his arms into the air. He then fell onto his back before pushing himself back up and continuing to walk northbound. The witness taking the video can be heard saying, "he has a gun."

The second video shot by the same witness shows the police SUV's and the gunshots fired by the Officers can be heard. Due to the position of the SUV's it is not possible to see either the Officers or Mr. Hylton. Someone off camera can be heard saying, "the man was shooting off a cap gun like a fool." A female then says, "oh, he had a cap gun? And they had real guns?" The first voice responds, "it don't matter."

Shot Spotter:

Shot Spotter recorded four, individual single shot episodes. It also recorded one multi-shot episode.

Fingerprint Analysis:

Fingerprint processing of the firearm located on Mr. Hylton was conducted but had negative results.

DNA Testing:

DNA swabbing of the firearm located on Mr. Hylton was done but was not sent out for testing given the other evidence available.

Gunshot Residue:

GSR swabbing of Mr. Hylton's hands was done but was not sent out for testing given the other evidence available.

Medical Report:

Mr. Hylton suffered six gunshot wounds. One gunshot wound to the right shoulder that traveled from his back to his front. The projectile from this wound was recovered in his right chest wall. A second gunshot wound to the back that travelled back to front. A third gunshot wound to the right lateral torso which travelled back to front, and downward. This projectile was also recovered in the anterior abdominal wall. A fourth gunshot wound to the right upper quadrant of the abdomen which travels right to left and front to back. A fifth gunshot wound to the pelvis, the projectile for this wound was recovered in the retroperitoneum. A sixth grazing gunshot wound to the left arm.

A post-mortem toxicology report indicated that Mr. Hylton did not have any alcohol or illegal drugs in his system at the time of the incident.

Ballistics Report:

Ballistics testing was conducted on the firearm recovered from Mr. Hylton, and the two firearms belonging to Officer Johnson and Officer DiFebo respectively. The results of these tests were compared to the bullets and shell casings recovered from the scene. Mr. Hylton's weapon was a black in color Glock Model 43 9mm semiautomatic handgun. Officers Johnson's and DiFebo's handguns are both standard issue black Smith and Wesson Model M&P40 .40 caliber semiautomatic handguns.

Four 9mm shell casings were recovered, and testing concluded they were all fired from the 9mm handgun recovered from Mr. Hylton. Two 9mm casings were located in the street immediately behind the 2011 gray Chevrolet Silverado belonging to Mr. Hylton. An additional spent 9mm casing was located on the sidewalk, on the eastern side of Washington Street, next to the same vehicle. The last 9mm casing was located next to Mr. Hylton's body. In addition, two live 9mm rounds were also located, one behind the truck and another in a parking lot up the street from the truck.

A total of thirteen .40 caliber shell casings were also recovered from the scene. All .40 caliber casings were located on the western side of Washington Street, with a few under nearby

vehicles. Of the thirteen casings, testing concluded that six were fired from Officer DiFebo's firearm and seven were fired from Officer Johnson's firearm.

A total of six projectiles were recovered, three from the scene and three after the autopsy of Mr. Hylton. All six recovered projectiles were determined to be .40 caliber. Of the three projectiles recovered from the scene, one was recovered in the street, behind Mr. Hylton's body. It was determined after testing that the projectile was fired by the firearm belonging to Officer Johnson. The second projectile recovered from the scene was found farther south on Washington Street, on the west side of the street. It was conclusively determined that this projectile was not fired from the 9mm Glock but due to damage no determination could be made as to which .40 caliber firearm fired the projectile. The last projectile recovered from the scene was found the next day in a white Dodge Caravan, parked near where Mr. Hylton had been shot. The projectile was found inside the rear passenger compartment. Again, due to damage no conclusion could be reached about which .40 caliber firearm fired the projectile.

Of the three projectiles recovered from Mr. Hylton's body, only one could be conclusively determined to have been fired by a specific .40 caliber firearm. It was concluded that that projectile had been fired from Officer Johnson's firearm. One of the other projectiles could be matched to the projectile found in the white Caravan but it could not be determined which firearm fired that shot.

Additional Evidence:

In addition to the other evidence discussed, Officers located and photographed a sideview mirror belonging to the 2011 gray Chevrolet Silverado on the sidewalk in pieces next to the vehicle. A black holster was also found on the sidewalk near the rear of the truck.

The 2011 gray Chevrolet Silverado had a single bullet hole in the rear gate area. A tan Chevrolet vehicle parked in front of the Silverado also sustained a gunshot to the front hood area in an apparent ricochet. A red Toyota RAV4 parked on the west side of Washington Street, near where the Officers were standing, sustained a gunshot to the front hood.

On the other side of the street was parked a silver Pontiac G6 which sustained a gunshot to the front bumper. Mr. Hylton was standing in front of the Pontiac, on the driver side when he was shot. It appears from the damage that the bullet which struck the front of the Pontiac was fired from the southwest side of the street, where the Officers were standing.

In front of the silver Pontiac was parked a white Dodge Caravan which sustained bullet damage to the rear trunk as well as a flat tire on the rear passenger side. It appears at least two bullets struck the rear of the Caravan.

On 28th Street, around the corner from Washington Street but still within line of sight was parked a green vehicle which sustained two glancing bullet strikes to the hood. These are

consistent with shots coming from the west side of Washington Street where the Officers were standing.

Conclusion

The State must determine whether the use of deadly force by Officers Keith Johnson and Angeline DiFebo against Mr. Hylton was 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 protecting the [officer] against the use of unlawful force by the other person on the present occasion.”²

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(s) actually believed, at the time they intentionally fired their weapon, that such action was necessary to protect themselves 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). If such force is determined to have been justified, we will also examine whether such force negligently or recklessly created injury or risk of injury to innocent third parties pursuant to 11 *Del. C.* § 470(b).

It is difficult to know the precise thoughts that go through someone’s mind at any given moment. In this case, we cannot assess motive or explain the mental state of Mr. Hylton beyond the available facts and evidence. Mr. Hylton’s friend had committed suicide earlier in the week and, according to W12, Mr. Hylton believed this act to be “cowardly” – stating further Mr. Hylton was “very critical” of it. W10 had been with Mr. Hylton all day, and described him as acting differently, but was surprised to hear that he had been shot later that same day. The facts here – as established by multiple witnesses – show that Mr. Hylton was acting irrationally and putting people in fear. Multiple, independent civilian witnesses saw or heard Mr. Hylton fire a gun either into the air or into a vehicle. Multiple, independent civilian witnesses observed Mr. Hylton pointing a firearm at people who were walking down the street or sitting on their porches. Multiple, independent civilian witnesses also observed Mr. Hylton yelling, falling to his knees, shouting unintelligibly and acting irrationally. This is also corroborated both by cell phone video which shows a man in a blue shirt falling to his knees and yelling at one point – and 911 calls to dispatch that a man in a blue and white shirt was firing a gun. While multiple witnesses believe

² 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.”

that Mr. Hylton had an “altered mental state” or “was on something”, Officers were not provided any concrete information on his mental status, as it was unknown.³

Both Officer Johnson and Officer DiFebo heard the gunshots themselves, and both responded to the area of 27th and Washington Street where they were directed by civilians towards the gunshots. Dispatch also advised them of 911 calls received in that area for shots fired. When they arrived and exited their vehicles they saw Mr. Hylton, in a blue or blue and white shirt, with a firearm in his hand.⁴ Both Officers began issuing commands to Mr. Hylton to drop the gun. Multiple, independent witnesses confirm that repeated commands to “drop the gun” were given by the Officers. Those commands were heard by witnesses as far as at least a block away. Both W1 and W2 said that it looked as though Mr. Hylton was going to comply, as he began to bend over. Officer Johnson told investigators he was relieved when he saw Mr. Hylton begin to bend over as he believed that situation was going to resolve peacefully. However, both of those witnesses and both Officers agree that instead, Mr. Hylton abruptly began raising up and pointed the firearm at both Officers. W1 told investigators that they thought Mr. Hylton had fired at Officers but could not be sure and based on what they saw Officers had “no choice” but to fire.⁵

Both Officer Johnson and Officer DiFebo told investigators that based on Mr. Hylton’s action of raising the gun up in their direction, they felt their lives and the lives of surrounding pedestrians to be in jeopardy. Based on their observations, corroborated by witnesses, they discharged their weapons at Mr. Hylton. They stopped firing once Mr. Hylton hit the ground, indicating that in their minds the threat was ended. Under Delaware law, it is Officers Johnson’s and DiFebo’s individual subjective states of mind that is at issue. Based on the corroborated facts available it was objectively reasonable for both Officers to believe their life, or the lives of others, were in mortal danger.

The Officers were also not reckless or negligent in forming the belief that force was immediately necessary. Once arriving on scene both Officers gave repeated, clear commands, to drop the weapon. Both Officers took up defensive positions, with their firearms drawn, but neither fired immediately. Their actions were proportionate to the known threat in front of them, a man with a handgun. Both Officers only fired when Mr. Hylton raised the gun in their direction. Therefore, based on these corroborated facts, the Officers were not reckless or negligent in forming the belief that force was immediately necessary.

³ See the medical records which show that Mr. Hylton was not on any illegal drug and had not consumed any significant amount of alcohol.

⁴ There are some discrepancies with witness statements in what exactly Mr. Hylton was wearing. W8 said he had no shirt on. Other witnesses alternately say he was wearing a white shirt, a blue shirt, or a blue and white shirt. The cell phone video and surveillance video available establishes that he was wearing a blue tank top type shirt with white shorts. In addition, there is very little discrepancy in the witness statements regarding his behavior.

⁵ There is some evidence to indicate that Mr. Hylton may have fired at Officers. W1 and W4 both told investigators that they thought Mr. Hylton had fired immediately before the Officers. Both Officers also told investigators that it was possible Mr. Hylton fired, but in the confusion, they could not be sure. There was also a 9mm shell casing found next to Mr. Hylton’s body which ballistics testing confirmed was fired from the firearm he was carrying. Based on this evidence no conclusion can be drawn as to whether Mr. Hylton did, in fact, fire his weapon at Officers. Regardless, whether he did fire or not is an unnecessary inquiry given the other corroborated facts available leading to the legal conclusion.

Lastly, given that the Officers were justified to use force towards Mr. Hylton pursuant to 11 *Del. C.* § 464 we also determine that they were not negligent or reckless in injuring or creating a risk of injury to third persons under 11 *Del. C.* § 470(b). Both Officers took up positions of cover on the other side of the street from Mr. Hylton. Officer Johnson said they did this specifically in case they had to use force so that they would not be shooting down the street. Based upon the threat presented, an armed suspect, both Officers took steps to mitigate any potential collateral damage and were therefore not negligent or reckless in creating a risk of injury to third parties.

Based on the available evidence and the application of expert opinion to that evidence, we have concluded that it was objectively reasonable for Officers Johnson and DiFebo to believe that the use of deadly force upon Mr. Hylton was immediately necessary for the purpose of protecting both themselves individually and the civilians nearby. For these reasons, the Department of Justice concludes the use of deadly force by Patrolman Keith Johnson and Patrolman Angeline DiFebo upon Mr. Hylton does not constitute a criminal offense under the laws of the State of Delaware.