

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

SUBJECT: SHANE S. SWIDER

OFFICER: NICHOLAS T. MCLAUGHLIN

DATE OF INCIDENT: NOVEMBER 29, 2019

Dated: August 4, 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 Corporal Nicholas T. McLaughlin against Shane S. Swider (referred to hereinafter as “Mr. Swider”). 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 November 29, 2019 at approximately 8:22 P.M., a 911 call was placed by Witness 1 (hereinafter “W1”), who reported a domestic argument in which Mr. Swider was expressing suicidal ideation and was armed with a handgun. Officers from Lewes Police Department responded to the scene and advised over radio that Mr. Swider was in the driveway of the residence and armed. Assisting Troopers from Delaware State Police, including Corporal McLaughlin, arrived shortly after at approximately 8:32 P.M. Cpl. McLaughlin was armed with an agency-issued Sig Sauer 516 .223 caliber rifle and took up a position at the end of the driveway to provide lethal cover for Lewes Police Officers who were negotiating with Mr. Swider.

Mr. Swider spoke with the Officers and put the handgun to his head, making statements such as, “things will end tonight.” Officers on scene requested less lethal weapons and canine assistance, but neither were available nearby. Mr. Swider put the handgun on the ground at least twice, but he refused to move away from it. Officers on scene estimated they would not be able to reach Mr. Swider before he could grab the gun did not move on Mr. Swider. At approximately 9:06 P.M. Mr. Swider picked up the handgun and began raising it in the direction of Cpl. McLaughlin and Officer Layfield of the Lewes Police. The Motor Vehicle Recording reveals Cpl. McLaughlin yelled “stop” before he fired. Cpl. McLaughlin fired one round, striking Mr. Swider in the upper torso. Officers approached Mr. Swider and began rendering aid. He was transported to Beebe Hospital where he was subsequently pronounced deceased.

Police Witnesses:

Corporal Matthew Blakeman:

Corporal Blakeman of the Delaware State Police was interviewed in connection to this case. He stated that he was working overtime that night. He received a dispatch regarding a suicidal suspect possibly involving a weapon and requesting additional units. Both Cpl. Blakeman and Cpl. McLaughlin responded to the scene. Upon arrival they began providing cover for Lewes Police Officers who were engaged in negotiations with Mr. Swider. He saw Mr. Swider put the gun to his head while Officer Layfield was talking to him, encouraging him to drop the weapon. Cpl. Blakeman saw that the road in front of the house had not been cordoned off, so he and Cpl. McLaughlin moved their vehicles to block the street and returned to the scene.

Upon returning, Cpl. Blakeman heard Officer Layfield continuing to negotiate with Mr. Swider, eventually convincing him to place the firearm on the ground. Cpl. Blakeman looked around to see if he could get behind Mr. Swider to take him to the ground in order to resolve the situation. Cpl. Blakeman heard Mr. Swider state that he was going to be either killed by the police or himself and that he wasn't going to go back to Meadowood.¹ Mr. Swider asked for a cigarette and Cpl. Blakeman threw Mr. Swider his lighter. He saw Cpl. McLaughlin call for Delaware State Police negotiators.

They were continuing to try and get Mr. Swider to walk towards the Officer and away from the firearm but Mr. Swider was still refusing to move from where he had placed the firearm. Mr. Swider picked the firearm up again, but then dropped it again. Cpl. Blakeman said neighbors had grown curious and were peeking around the corners to see what was happening. Cpl. Blakeman turned to tell them to go back when he heard Cpl. McLaughlin state, "Don't pick up the gun" and heard a single shot. When he turned back he saw Cpl. McLaughlin with his rifle up, smoke coming from the barrel and pointed at Mr. Swider. Cpl. Blakeman and Cpl. McLaughlin approached Mr. Swider with their rifles drawn, they kicked the firearm away from Mr. Swider and began performing first aid. Mr. Swider did not make any statements while they were performing first aid.

Once other Officers approached to help provide first aid, Cpl. Blakeman picked up the firearm on the ground and took it back to his vehicle in order to secure it. He then went back and walked Cpl. McLaughlin away from the scene and to his vehicle.

Corporal Michael Venero:

Corporal Venero of the Delaware State Police is a negotiator and was interviewed in connection to this case. He told investigators that he responded to the scene on November 29, 2019 after hearing the incident on dispatch. Upon arrival he contacted Officer Layfield and assisted him in negotiation with Mr. Swider. Cpl. Venero described Swider as emotional and upset. He heard Cpl. McLaughlin order Mr. Swider to "drop the gun" and then heard a single

¹ MeadowWood Behavioral Health Hospital is a mental health treatment center located in New Castle, Delaware.

gunshot. Cpl. Venero was not looking at either Mr. Swider or Cpl. McLaughlin and did not see what prompted the shot. After seeing Mr. Swider on the ground, he approached and began rendering first aid.

Corporal Wayne Ingram:

Corporal Ingram of the Delaware State Police was interviewed and stated that he arrived at the scene and observed Mr. Swider in the driveway with a handgun at his feet on the ground. He was discussing with other Officers a plan to rush Mr. Swider and take him to the ground when he heard Cpl. McLaughlin say something like “don’t do that” and then a single shot. He turned and saw Mr. Swider fall to the ground and went over to him and began rendering first aid.

Sergeant James Locklear:

Sergeant Locklear of the Lewes Police Department was interviewed and indicated that he and other Lewes Officers were dispatched to Mr. Swider’s residence for a report of an armed suicidal subject. Sgt. Locklear was familiar with Mr. Swider from past incidents and was aware that sirens were a trigger for Mr. Swider, so they responded in silence. He told investigators that upon arrival Mr. Swider was standing in the driveway, armed with a handgun. Witness 1 exited the house and began walking down the stairs towards Officers but he was directed back into the residence.

Sgt. Locklear said Mr. Swider was upset over a fight with his family members, as well as the health of his family members. Sgt. Locklear said they convinced Mr. Swider to put the handgun down, but he did not move away from it, so they were unable to take him to the ground. Mr. Swider picked the gun back up while he was smoking, but then put it down again. Sgt. Locklear said that once the other Officers arrived they began planning how to take Mr. Swider to the ground when he heard a shot. He turned and saw Mr. Swider on the ground with a gunshot wound.

Sgt. Locklear told investigators he spoke to Witness 2 after the shooting and Witness 2 told him that he observed Mr. Swider shooting the handgun in the backyard earlier in the day. This conversation was recorded on Sgt. Locklear’s MVR as well.

Officer Brent Layfield:

Officer Layfield of the Lewes Police Department was interviewed, and he told investigators that he was dispatched to the residence on November 29, 2019 for a report of an armed suicidal subject. Officer Layfield said he had previously encountered Mr. Swider for his mental health issues. He said that when he arrived he observed Mr. Swider standing outside the residence holding a firearm to his side. He was acting irrationally, saying he was dead inside and that this was the end. Officer Layfield said that in the past they have been able to talk Mr. Swider down, but that on November 29 he seemed more agitated and paranoid and was slurring his words.

Officer Layfield stated that his firearm was holstered while he negotiated with Mr. Swider and that McLaughlin was providing cover for him. Mr. Swider put the firearm down to light a cigarette, but did not move away from it, and picked it back up shortly after. Mr. Swider later put the firearm down again, but he did not move away from it. Officer Layfield said that he observed Mr. Swider pick the firearm back up again and that he raised it in his and Cpl. McLaughlin's direction. He heard the shot from Cpl. McLaughlin's rifle and observed it strike Mr. Swider. He ran over and began providing first aid.

Primary Officer Interview:

Corporal Nicholas McLaughlin:

Corporal McLaughlin of the Delaware State Police was interviewed regarding his involvement with this matter. On November 29, 2019 he was assigned to Troop 7 PACE but was working an overnight minimum staffing pay job beginning at 7:00 P.M. and ending at 6:00 A.M. He said he heard the initial dispatch for the complaint, but he did not respond until Officers arrived and requested additional assistance. He arrived on scene and used his vehicle to block the roadway to prevent traffic. He grabbed his patrol rifle from his vehicle and approached the Officers on scene.

He saw Mr. Swider with the firearm to his head and he appeared distraught. He heard Mr. Swider state that no one cared about him, that Witness 1 had told him to kill himself and that "things would end tonight." Cpl. McLaughlin told investigators that the Lewes Officers on scene seemed to have a good relationship with Mr. Swider so he provided cover for them while they tried to talk him down. Cpl. McLaughlin made additional requests over radio for a bean bag gun, which is less lethal, as well as a Crisis Management Team. He said that Mr. Swider put down the firearm to smoke a cigarette, but then picked the firearm back up. Mr. Swider appeared paranoid that Officers were going to sneak up on him with a canine or a Taser.

Mr. Swider put the firearm down a second time, and he began pacing and looking at it. He did not move far enough away from the firearm for Officers to rush him. Cpl. McLaughlin told investigators that he observed Mr. Swider reach down and pick the firearm back up, and then raised the firearm in the direction of himself and Officer Layfield with his arm extended straight out. Officer Layfield's weapon was holstered while he was speaking to Mr. Swider, and Cpl. McLaughlin was the only Officer providing lethal cover. He said he feared that Mr. Swider was going to open fire on himself or Officer Layfield and so he raised his rifle and fired a single shot which struck Mr. Swider and caused him to fall to the ground. Cpl. McLaughlin and other Officers approached Mr. Swider and began rendering first aid. He saw the firearm near Mr. Swider's hand.

Civilian Witnesses

Witness 1:

Witness 1 was interviewed in connection with this case. This witness advised that s/he called 911 after Mr. Swider found W1's handgun and told W1 he was going to commit suicide. W1 told Mr. Swider that W1 did not care and W1 had to focus on an ill family member right now. Mr. Swider left the room after that conversation. W1 then called W3 to update her/him on the health status of the ill family member. During that phone call, Mr. Swider returned with W1's handgun in his hand and advised W1 he had put a round into the chamber. W3 asked W1 to talk to Mr. Swider, so W1 handed the phone to Mr. Swider who then went into a nearby bedroom.

W1 went into the bedroom where Mr. Swider was seated and W1 sat on the bed to talk to him. Mr. Swider advised W1 to move because he did not want W1 in the line of fire when police arrived. W1 told Mr. Swider not to do this in a room where the ill family member would return to find blood splattered everywhere. Mr. Swider decided to go outside and W1 then went and woke Witness 2 who had been sleeping.

When police arrived, they told W1 to go back inside, W1 cursed at them and told them the weapon probably would not fire anyway. W1 went inside and did not look back outside until hearing a single shot. W1 saw police trying to revive Mr. Swider. W1 told police that the handgun Mr. Swider had was usually kept in a safe, but W1 had removed it for protection against Mr. Swider. W1 also told police that he had not heard Mr. Swider threaten Officers, only that he was going to end his own life.

Witness 2:

Witness 2 was also interviewed in connection with this case and advised that earlier in the day W2 was returning from work and heard what sounded like a firecracker. W2 observed Mr. Swider outside with the handgun and W2 told him to put it away because it could hurt someone. W2 said Mr. Swider was acting "weird", but he did not mention any suicidal thoughts. W2 advised that Mr. Swider had been mentioning suicide a lot lately but not on that specific day. Mr. Swider told W2 he would return the gun to the safe.

W2 went inside and fell asleep early but was woken by W1 because of the incident with Mr. Swider. The police had arrived at that point, so W2 attempted to take the dogs outside for a walk but was redirected by police. W2 went back inside with W1 when W2 heard the gunshot

Witness 3:

Witness 3 was interviewed in connection with this case and advised that s/he had a conversation over the phone with Mr. Swider on the night of the incident. W1 had called W3 to update them on the health status of a mutual family member. W3 said W1 told her/him that Mr.

Swider had a handgun in his hand and W1 gave the phone to Mr. Swider. Mr. Swider was slurring his speech, but W3 believed Mr. Swider was clear in his thoughts. W3 asked Mr. Swider what his plan was, and Mr. Swider said he would wait in the bedroom until police arrived and then he was going to point the gun at them.

Other Witnesses:

Officers conducted an area canvass for other possible witnesses. No other witnesses to the shooting were located.

Physical Evidence

Motor Vehicle Recordings:

Six motor vehicle recordings (“MVR”) were recovered from both the DSP vehicles and the Lewes PD vehicles. Of those six, three were relevant to the situation. In addition, no body cameras were worn by any Officer. None of the vehicles were pointed down the driveway and therefore none of them show the actions of Mr. Swider leading up to the shooting. However, the MVR belonging to Sgt. Locklear’s vehicle shows Cpl. McLaughlin providing cover and firing a single shot down the driveway. The MVR’s also picked up the audio of the situation.

Sgt. Locklear’s MVR shows the DSP officers arriving and blocking off the street with their vehicles. It then shows Cpl. McLaughlin providing cover for Lewes PD who were negotiating with Mr. Swider. The MVR faced down the street, and not down the driveway and therefore does not show Mr. Swider. Officers can be heard multiple times on the MVR negotiating with Mr. Swider and encouraging him to put down the weapon.

At around approximately 35:00 minutes into the recording Cpl. McLaughlin is clearly visible next to two Lewes PD Officers. Locklear and two other DSP Officers broke off to converse about the situation, leaving the Lewes Officers and Cpl. McLaughlin providing cover. Cpl. McLaughlin’s rifle was pointed down, his finger near but not on the trigger. A few seconds later Cpl. McLaughlin raised his rifle and pointed it down the driveway towards Mr. Swider, who was off camera. The Lewes Officers can be seen reacting to Mr. Swider by placing their hands on their service weapons and taking multiple steps back. Cpl. McLaughlin can be heard yelling “stop”, and then firing his weapon once. The Officers on scene began advancing on Mr. Swider, yelling “Don’t touch that gun.” After the shooting an Officer says, “I didn’t see anything”.² The Officers can be heard off camera rendering aid and calling for backup.

² Based on our review, this comment was likely made by Sgt. Locklear. Sgt. Locklear gets on the radio to advise SUSCOM that shots were fired, and his voice sounds the same as the voice that made the comment. Sgt. Locklear had been off to the side, discussing the situation with DSP Officers, and he would not have been able to observe Swider’s actions. Officer Layfield, the only other officer who observed Swider’s actions, is seen on video as reacting and starting to grip his holstered weapon when Cpl. McLaughlin fires.

Officer Layfield's MVR does not show video of the incident but did pick up Officer Layfield's microphone. The negotiations with Mr. Swider can be heard, including the multiple pleas to put down the weapon. Cpl. McLaughlin's MVR also does not show video of the incident, but the microphone does pick up Cpl. McLaughlin yelling "stop" before firing a shot.

Fingerprint Analysis:

No fingerprints were taken or analyzed.

DNA Testing:

No DNA testing was conducted.

Medical Report:

Mr. Swider suffered a single gunshot wound to the upper right torso. The shot went through his lung, aorta and heart. The bullet lodged in the right lower torso area. His post-mortem drug screen was positive for opiates, benzodiazepines and tramadol.

Ballistics Report:

Cpl. McLaughlin was carrying his DSP issued .223 caliber Sig Sauer 516, which he turned over to investigators. In addition, two casings were recovered from the scene, one .223 caliber casing from the grassy area in the north end of the driveway and one .32 caliber casing from the grass in the backyard. A .32 caliber Browning pistol was located next to Mr. Swider. Both the rifle and the pistol were test fired and found to be operable. The .32 caliber casing was tested and found to be a match for the recovered pistol. The .223 casing was tested and found to be a match to the DSP issued rifle that Cpl. McLaughlin was carrying. In addition, the projectile recovered from Mr. Swider matched the rifle that Cpl. McLaughlin was carrying.

Conclusion

The State must determine if the use of deadly force by Corporal McLaughlin against Mr. Swider 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."³

³ Justification of use of force for the protection of other persons is also applicable due to the presence of other Officers, *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."

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)*.

Cpl. McLaughlin responded to the scene of an armed and suicidal subject. W1 said that s/he heard Mr. Swider say that he was either going to kill himself or have officers kill him. Mr. Swider told W1 to exit the house, so s/he would not be caught in the crossfire when officers killed him. Upon arrival, Cpl. McLaughlin observed Mr. Swider with a handgun and heard him make statements about his own death. Mr. Swider repeatedly put the weapon down and picked it back up, while Officers encouraged him to put it down and walk away. No Officers attempted to make a move towards Mr. Swider when he put the weapon down because according to them they were not sure they could get to him in time before he picked the weapon back up. At the time Cpl. McLaughlin fired, he said he observed Mr. Swider raise the weapon and point it towards both himself and other Officers, including Officer Layfield. He issued a command to “stop” before firing his weapon.

Officer Layfield corroborates Cpl. McLaughlin’s recollection of events, stating that “[Mr. Swider] pick[ed] it up the last time and it was aiming out towards the roadway . . . towards us.” He also said that Cpl. McLaughlin had been providing cover for him, and that his weapon was holstered and therefore he was unable to react in time. These events are also corroborated by the MVR from Sgt. Locklear’s vehicle which shows the other Officers with holstered weapons. It also shows Cpl. McLaughlin with his weapon pointed down, and then raising it up, pointing it in the direction of Mr. Swider and yelling, “stop” before firing. Based on these facts the legal conclusion that can be reached is that at the time he fired Cpl. McLaughlin believed it was necessary to use force to protect himself and others.

The second portion of the inquiry regarding the actions of Cpl. McLaughlin requires a legal assessment as to whether he was reckless or negligent in forming the belief that force was immediately necessary. We determined that he was neither reckless nor negligent. Cpl. McLaughlin stated that he saw the firearm being raised towards himself and other Officers. This was corroborated by Officer Layfield who stated that he also saw the weapon being raised and pointed towards himself and Cpl. McLaughlin. Officer Layfield did not have his weapon drawn, and Cpl. McLaughlin was the only Officer providing cover. This is corroborated by the MVR, which shows Cpl. McLaughlin as the only Officer with a weapon watching Mr. Swider. Additionally, neither Cpl. McLaughlin nor any other Officer provoked Mr. Swider or instigated him to pick up the weapon. All Officers were attempting to get him to put the weapon down and were formulating a plan to take him into custody when he picked the weapon back up. Cpl. McLaughlin’s observation of the firearm being raised and pointed toward himself and another

Officer leads to the legal conclusion that he was not reckless or negligent 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 Cpl. McLaughlin to believe that the use of deadly force upon Mr. Swider was immediately necessary for the purpose of protecting both himself and the other Officers on scene. For these reasons, the Department of Justice concludes the use of deadly force by Corporal McLaughlin upon Mr. Swider does not constitute a criminal offense under the laws of the State of Delaware.