FINAL REPORT OF THE DEPARTMENT OF JUSTICE

USE OF DEADLY FORCE BY WILMINGTON POLICE DEPARTMENT

SUBJECT: ORRIN H. DANIELS

OFFICERS: DAVID SIMMONS AND LAVETTE WILLIAMS

DATE OF INCIDENT: MARCH 5, 2020

Dated: March 5, 2021

Scope of the Investigation

This is the final report of the Delaware Department of Justice, Division of Civil Rights and Public Trust ("DCRPT"), arising out of the investigation into the use of deadly force by Officers David Simmons and LaVette Williams against Orrin H. Daniels ("Daniels"). DCRPT reviewed evidence consisting of interviews of civilian and police witnesses, scene photos, surveillance footage, 911 recordings, dispatch records, police reports, medical records, and the ballistics report. Investigators and attorneys with DCRPT reviewed this use of force incident for the Department of Justice, independent of any administrative or criminal investigation conducted by the Wilmington Police Department.

This is the fifth report issued by DCRPT since its inception, but it is the first report on a case involving a pending criminal defendant.[1] As our reports seek to expand transparency and ensure trust in the process of reviewing the deadly use of force by law enforcement, we must stress that this report is wholly separate from the criminal proceeding – DCRPT's investigators and prosecutors are not involved in the criminal case, nor are the Criminal Division's prosecutors involved in DCRPT's decision making. The outcome of Daniels' criminal case must be determined solely and exclusively on the evidence presented at trial, and in accordance with the Court's instructions. This report in no way relieves the State of Delaware of its burdens at trial.

Purpose of the Department of Justice Report

The Department of Justice determines only 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 each case. This report expresses no opinion whether involved officers' actions complied with departmental policies or procedures.

Facts

On Thursday March 5, 2020 at approximately 06:17 P.M., Master Corporal David Simmons responded to the block of 3200 West 2nd Street in Wilmington, Delaware on an unrelated call when he was flagged down by a civilian in reference to an alleged domestic violence situation. M/Cpl. Simmons recognized the address as belonging to Daniels. In fact, M/Cpl. Simmons had

[1] Daniels survived a single gunshot to his arm and was indicted by a Grand Jury on six counts of Reckless Endangering First Degree, six counts of Possession of a Deadly Weapon During the Commission of a Felony, and one count of Resisting Arrest with Force or Violence. An indictment is the charging document in a criminal case and does not itself constitute evidence of guilt.

previous encounters with Daniels – and Daniels was known to resist arrest.[2] M/Cpl. Simmons called for additional units, but before those units could arrive, Daniels went back into the apartment building and out the back door. Witness 1 ("W1") pointed out that Daniels was entering a white BMW to flee the area. At this point, Daniels had armed himself with a motor vehicle, which, in certain circumstances, constitutes a deadly weapon under Delaware law.

Responding officers attempted to box in the white BMW in the parking lot, but Daniels drove around them onto 2nd Street, striking a police vehicle. Daniels could not get past the arriving officers; instead he reversed and backed the vehicle down 2nd Street, striking a parked vehicle. Officers on foot attempted to approach the vehicle. Sergeant Phil McLaughlin gave verbal orders to Daniels to get out of the vehicle – all of which were ignored – and used his ASP to smash the passenger side window. He then deployed his taser on Daniels – but Daniels was undeterred.

Daniels then drove the vehicle forward again, onto the sidewalk and then onto the front lawns of the nearby residences towards the officers who were on foot. Both M/Cpl. Simmons and Officer LaVette Williams fired their service weapons once towards Daniels. Daniels continued to drive past them and down 2nd Street, out of sight. The white BMW was located by other officers at 907 N. Pine Street, approximately three miles away, and Daniels was located walking nearby. He had suffered a gunshot wound to his left arm and was transported to Christiana Hospital for treatment.

Police Witnesses:

Master Corporal David Simmons:

M/Cpl. Simmons was assigned to uniform patrol division and has worked for WPD for over 30 years. In his interview, M/Cpl. Simmons stated that he worked the 4:00 P.M. to 3:00 A.M. shift on March 5, 2020. M/Cpl. Simmons was dispatched to an unrelated incident near the vicinity of the 3200 block of West 2nd Street. As M/Cpl. Simmons drove down West 2nd Street, he observed W1 arguing outside with a man (Daniels). M/Cpl. Simmons drove his patrol vehicle to where they stood and rolled down his window. W1 then commented to Daniels that a cop had arrived – which caused Daniels to go into a two-story, rowhouse-style apartment building. M/Cpl. Simmons observed Daniels throw a bike from the apartment building. W1 informed M/Cpl. Simmons that Daniels was under the influence of drugs.

M/Cpl. Simmons recognized Daniels from a domestic violence incident that occurred one-year prior at the same location. During, the prior encounter Daniels resisted arrest by breaking free and fleeing from officers. M/Cpl. Simmons recalled that Daniels was tased during that previous encounter, but it had no effect on him. M/Cpl. Simmons considered Daniels' prior

[2] A review of Daniels' criminal history shows 13 prior convictions for resisting arrest and one for Escape 3rd degree.

behavior and called for backup. M/Cpl. Simmons determined that the suspect was acting in the same way he had during the domestic violence incident a year prior.

M/Cpl. Simmons advised W1 not to return to the apartment, and he parked his patrol car on 2nd Street at the entrance of a parking lot, waiting for backup. Sgt. McLaughlin arrived soon thereafter. W1 informed M/Cpl. Simmons that Daniels ran through the back door of the apartment building. M/Cpl. Simmons observed Daniels running behind the apartment complex.

W1 then informed M/Cpl. Simmons that Daniels was attempting to get away in a white BMW. M/Cpl. Simmons saw Daniels in the white BMW and observed WPD patrol cars block the parking lot entrance to try to prevent Daniels from escaping. M/Cpl. Simmons was on foot when he observed Daniels reverse the white BMW and hit a parked car. M/Cpl. Simmons then observed Sgt. McLaughlin approach the white BMW and use his ASP to smash the passenger side window of Daniels' vehicle. M/Cpl. Simmons saw that Daniels' head was down and he appeared to be putting the vehicle in gear. M/Cpl. Simmons then observed Sgt. McLaughlin deploy his taser and strike Daniels with no effect. M/Cpl. Simmons heard the suspect's engine rev – and he yelled at Sgt. McLaughlin to move away from Daniels' vehicle in fear that it would drag Sgt. McLaughlin.

M/Cpl. Simmons stood on the sidewalk in front of 3205 West 2nd Street as Daniels accelerated the vehicle in his direction. M/Cpl. Simmons knew other officers were standing behind him. M/Cpl. Simmons was also concerned with the speed of Daniels' vehicle – and he believed civilians could be in danger as Daniels drove the vehicle onto the sidewalk and front lawns. M/Cpl. Simmons took a few steps back but was limited because of a parked SUV directly behind him. As Daniels drove near him on the grass, M/Cpl. Simmons un-holstered his service firearm and fired once toward the white BMW and Daniels. Daniels continued to drive the vehicle on the sidewalk and front lawns and maneuvered onto 2nd Street. M/Cpl. Simmons observed Daniels stop the vehicle for a brief moment as if the vehicle stalled, but then continued driving. M/Cpl. Simmons heard a WPD radio transmission about Daniels and the direction of his vehicle. M/Cpl. Simmons got in his patrol car and attempted to follow Daniels but could not locate him. M/Cpl. Simmons then returned to the scene.

Patrol Officer LaVette Williams:

Officer LaVette Williams was a responding officer the day of March 5, 2020 and worked the 10:00 A.M. to 9:00 P.M. shift. Officer Williams was assigned to the uniform services division and has worked for WPD for one year. She was advised by dispatch of a domestic in progress and was dispatched to the 3200 block of West 2nd Street to assist M/Cpl. Simmons and Officer Cintron, who were already there. Officer Williams arrived on the scene and met M/Cpl. Simmons and Officer Cintron at 2nd Street and Corbin Court. They advised her that Daniels had fled out of the back door of the home. W1 then approached and said that Daniels was getting in a white vehicle and trying to leave the area. They walked toward 2nd Street and Officer Williams observed the white vehicle coming down West 2nd Street. Officer Williams stated that an officer (she does not know who) used a patrol vehicle to block Daniels' car in on the intersection

of 2nd Street and Corbin Court. West 2nd Street is a two-way street and there were cars parked on both sides.

Officer Williams was on the sidewalk on 2nd Street when she saw Daniels' car strike one of the patrol vehicles. Daniels then reversed and backed into a parked red car at the end of the street near the dumpsters. Officer Williams then saw Sgt. McLaughlin exit his vehicle and break the front passenger window of Daniels' car with his ASP. Officer Williams stated she heard Sgt. McLaughlin repeatedly telling Daniels to "stop". Officer Williams observed Sgt. McLaughlin tase Daniels; however, it did not appear to affect him.

Officer Williams then saw Daniels put his car in drive at a high speed, jump the curb on 2nd Street, and drive toward Officers Simmons and herself. According to Officer Williams, both she and M/Cpl. Simmons were standing in a staggered manner, with Williams behind Simmons. Officers Rooke and Adams were also present. Rooke was standing in the roadway, and Adams was standing behind Officer Williams on the sidewalk. A SUV was immediately behind Officer Williams so she could not back up and get out of the way of Daniels' car. Behind Daniels' car were residential properties. There were also civilians around.

Daniels drove his vehicle toward them and then M/Cpl. Simmons discharged his weapon, but Daniels failed to stop. Officer Williams then fired her weapon once. She stated that she was in fear of her own life, as well as the lives of M/Cpl. Simmons, officers behind her and civilians that might have been on the sidewalk/grass area. She stated that his car was pretty close to them and was diagonally coming toward them at a high rate of speed. After she discharged her weapon, Daniels continued driving down 2nd Street on the grass in front of the houses. He then jumped the curb back onto the street and continued driving. Officer Williams followed the responding officers and Daniels until she reached the corner of Lancaster Avenue and North DuPont Highway and then returned to the scene.

Sergeant Phil McLaughlin:

Sgt. McLaughlin was interviewed regarding the incident and provided the following information. Sgt. McLaughlin was assigned to the patrol division and has been an officer for approximately eighteen years. Sgt. McLaughlin responded to 2nd Street after hearing M/Cpl. Simmons on the radio requesting additional units for a domestic situation. When Sgt. McLaughlin arrived, he met with M/Cpl. Simmons who advised that a male subject had fled and possibly left the area. They walked to the rear of the apartment building to look for the male subject and then went back toward the front of the building toward 2nd Street. Sgt. McLaughlin got back into his patrol vehicle when he was approached by W1 and told that the male was in a white vehicle and pointed down 2nd Street.

M/Cpl. David Yanush arrived. Sgt. McLaughlin drove behind M/Cpl. Yanush towards the white BMW, but the vehicle began coming towards them before stopping and then backing up. Sgt. McLaughlin parked his patrol vehicle in the middle of 2nd Street to prevent the BMW from fleeing. He then heard the engine of the BMW revving and thought, "this guy is going to do something crazy". The BMW came down the street and struck his vehicle at a low rate of

speed before backing down 2nd Street again, striking a parked vehicle in the process. Sgt. McLaughlin exited his vehicle and approached the BMW on the passenger side, giving verbal commands to stop and exit the vehicle. The engine revved, but the vehicle did not move.

Sgt. McLaughlin broke the passenger side window with his ASP and saw Daniels looking straight ahead and sweating profusely. Daniels had his hand on the gear shift and was moving it back and forth. Sgt. McLaughlin deployed his taser, but it had no apparent effect upon Daniels. Sgt. McLaughlin then saw Daniels drive the vehicle up on the sidewalk and front lawns of the nearby residences and saw the vehicle come "very close to hitting" the officers. Sgt. McLaughlin could see the officers in the area scattering to avoid the vehicle. Sgt. McLaughlin remembered hearing a gunshot as the vehicle drove towards the officers but did not know who fired it. He then observed the BMW drive down 2nd Street and away from them.

Patrol Officer Kyle Adams:

Officer Adams was assigned to the uniform services division and has worked for WPD for one year. During his interview, Officer Adams stated that he worked the 4:00 P.M. to 3:00 A.M. shift on March 5, 2020. Officers Adams received a radio broadcast requesting backup to the 3200 block of West 2nd Street. Upon arrival, Officer Adams observed multiple police cars and made contact with Sgt. McLaughlin and Officer Jose Cintron. W1 informed the officers that Daniels may be difficult to control because s/he believed him to be under the influence of cocaine. Officer Adams then spotted Daniels driving a white BMW vehicle on West 2nd Street and reversing into a parking lot. Officer Adams walked towards the vehicle from the sidewalk and front lawn area of 3207 and 3205 West 2nd Street. A few officers moved their vehicles to enclose Daniels' vehicle in the parking lot.

As the officers closed in on the BMW, Daniels attempted to get out of the parking lot by driving his vehicle forward – and hitting Sgt. McLaughlin's patrol car. Daniels then reversed his vehicle and hit a parked civilian car. Officer Adams observed Sgt. McLaughlin walk towards the vehicle and smash the passenger side window with his ASP. He heard Sgt. McLaughlin giving verbal commands instructing Daniels to stop. Officer Adams also heard Sgt. McLaughlin warn Daniels that he would be tased if he did not follow instructions. Daniels revved the vehicle engine and did not respond. Sgt. McLaughlin then tased Daniels with no apparent effect.

Officer Adams saw Daniels put the vehicle in drive and drive off the roadway onto the sidewalk and front yards where Officer Adams, M/Cpl. Simmons, and Officer Williams stood. According to Officer Adams, before the car came in his direction, M/Cpl. Simmons was on his right but later repositioned on his left, towards the street. Officer Adams further stated that Officer Williams was positioned to the left of him. Officer Adams saw the vehicle coming towards him and believed the vehicle would hit him. Officer Adams jumped towards the wall of the apartment building in the opposite direction of the oncoming vehicle. While jumping out of the way, Officer Adams heard two "pops" which he registered as gunshots, but he did not see

any officers fire their weapons. Officer Adams turned his head to look for the vehicle and thought he heard a third gunshot.[3] Officer Adams did not know who fired the gunshots or from where the shots were fired. Officer Adams observed the vehicle veer from the sidewalk back towards the road and drive away on 2nd Street.

Patrol Officer Jose Cintron:

Officer Cintron was assigned to the special operations K-9 unit and has worked for WPD for 12 years. During his interview, Officer Cintron stated that he worked the 6:00 P.M. to 1:00 A.M shift on March 5, 2020. Officer Cintron was patrolling the area of 3rd Street and Van Buren in Wilmington when he received a call from M/Cpl. Simmons requesting backup at the 3200 block of West 2nd Street. Officer Cintron was the second officer to arrive at the scene, after M/Cpl. Simmons. Officer Cintron parked in the roadway on 2nd Street. Officer Williams arrived third and parked behind Officer Cintron's patrol car. M/Cpl. Simmons gave Officers Cintron and Williams background information on Daniels, his prior encounters with Daniels resisting arrest, and the circumstances of the current incident. M/Cpl. Simmons also showed the officers a photo of the suspect for identification purposes.

After Officer Cintron received this information, he looked down the parking lot off of 2nd Street and saw Daniels in a white vehicle. As Officer Cintron told M/Cpl. Simmons that he saw Daniels, W1 simultaneously yelled to the officers that Daniels was in a white BMW. Sgt. McLaughlin, in his patrol car, followed the white BMW into the parking lot as Officer Cintron moved his patrol car to block the parking lot entrance behind Sgt. McLaughlin. Daniels attempted to drive out of the parking lot but appeared to be blocked. Daniels remained in the white BMW and revved the engine. Officer Cintron then observed Sgt. McLaughlin flash the headlights of his patrol car, at which point Daniels accelerated his vehicle forward, ultimately hitting the front of Sgt. McLaughlin's vehicle and turning onto West 2nd Street. Daniels then reversed on 2nd Street and hit a parked civilian car.

Sgt. McLaughlin exited his patrol car and approached Daniels' vehicle from the passenger side. Officer Cintron was inside his patrol vehicle as he observed Sgt. McLaughlin use his ASP to break the passenger side window of the white BMW and give Daniels verbal commands. Daniels did not respond and attempted to put his vehicle in drive. Sgt. McLaughlin then tased Daniels with no effect.

Officer Cintron then exited his vehicle and stood in front of his patrol car, noticing M/Cpl. Simmons and Officer Williams standing near the sidewalk and front lawns. Daniels put his vehicle in drive and accelerated forward. All officers were clustered together and did not have anywhere to go. Daniels drove approximately five to six feet forward before turning and driving up on a sidewalk towards M/Cpl. Simmons. Officer Cintron stated Daniels came within

[3] Officer Adams and Officer Cintron reported hearing three gunshots in their respective interviews. Only two shots were fired in total.

centimeters of hitting M/Cpl. Simmons; he did not see Officer Williams.[4] At that time, Officer Cintron thought he heard three gunshots.

Daniels continued driving on the sidewalk and front lawns, eventually maneuvering his vehicle onto 2nd Street. By the time Officer Cintron and Sgt. McLaughlin cleared the parking lot entrance, Daniels was gone. Officer Cintron transmitted to the WPD radio that shots were fired and provided a description of Daniels and his vehicle. Officer Cintron returned to his police car and unsuccessfully attempted to locate Daniels. Officer Cintron later received a radio broadcast stating Daniels was on Pine Street. He then reported to that location and encountered Daniels with other officers.

Patrolman James Rooke:

Officer James Rooke was assigned to the uniform services division and has worked for WPD for over two years. During his interview, Officer Rooke stated that he worked the 4:00 P.M. to 3:00 A.M. shift the night of March 5, 2020. His partner was Officer Adams and they were dispatched to assist M/Cpl. Simmons. When they arrived, there were two or three patrol cars already there, including M/Cpl. Simmons. Upon arrival, Officers Rooke and Adams got out of their vehicle and observed M/Cpl. Simmons standing outside his vehicle. M/Cpl. Simmons stated that Daniels had fled out of the back door of the residence and that Daniels may possibly be nearby on foot. M/Cpl. Simmons said that they had dealt with Daniels before and that he is known to physically resist arrest and fight police officers. M/Cpl. Simmons then showed Officer Rooke a picture of Daniels for identification, whom Officer Rooke recognized.

Officer Rooke stated that W1, unknown to him at the time, advised them that Daniels was not on foot but was possibly in a white BMW. W1 then pointed Daniels out as he was driving eastbound down 2nd Street. Officer Rooke saw Daniels hit the front of a patrol vehicle and then drive around onto 2nd Street. The white BMW was blocked by patrol vehicles on the intersection of 2nd Street and Corbin Court and could not get past them. Officer Rooke then saw Daniels reverse the white BMW down 2nd Street and back into a parked red vehicle at the end of the street which was facing westbound. The red vehicle was in the middle of 2nd Street near the dead end of the fence line. Officer Rooke stated that he then saw Sgt. McLaughlin break the front passenger side window of Daniels' car with his service ASP and deploy his taser towards him but it seemed to have no effect.

Officer Rooke stated he could hear the vehicle engine revving but the vehicle was not moving. The officers were telling Daniels to turn the car off while he was revving the engine but Daniels was unresponsive. Officer Rooke then saw Daniels start driving directly toward him and the other officers. They were all standing in a horseshoe shape. Officer Rooke was standing in the middle of the street and moved out of the way of the BMW. Officer Rooke stated the BMW

[4] Officer Cintron further stated in his interview that although he did not see Officer Williams, she later told him that she had fired her firearm, too.

started coming forward again toward them but veered off to the left, up onto the curb. Daniels then drove sporadically on the sidewalk in an attempt to get away. He came out on Corbin Court and drove eastbound on 2nd Street.

Officer Rooke could not remember if anyone was standing on the sidewalk. He was still in the middle of 2nd Street. He remembered hearing two gunshots about two or three seconds apart when Daniels drove onto the sidewalk. He did not know from which direction they came. There were people on the sidewalk, including other officers and his partner Officer Adams, but he did not know who they were or their positions.

Master Corporal David Yanush:

M/Cpl. David Yanush was interviewed in connection with this incident and told investigators the following. He was assigned to the patrol division and responded to M/Cpl. Simmons request for backup at a domestic incident in the area of 2nd Street. M/Cpl. Simmons advised that the subject was known to resist police. M/Cpl. Yanush was responding from a distance and other officers had arrived before him. M/Cpl. Yanush stated that W1 was yelling at officers, and that Daniels was getting into a white vehicle. M/Cpl. Yanush drove his patrol vehicle up 2nd Street and saw the white BMW coming towards him. He then observed the BMW back up on 2nd Street and into the rear parking lot of an apartment complex and drive back out and around him onto 2nd Street again.

The BMW could not get past the patrol vehicles on 2nd Street; and it backed up again, hitting a parked vehicle. M/Cpl. Yanush observed Sgt. McLaughlin approach the BMW and use a ASP to smash out the passenger side window. He saw Sgt. McLaughlin deploy his taser on the driver. M/Cpl. Yanush exited his vehicle and positioned himself near the parked patrol vehicles on 2nd Street. He heard the driver revving the engine and then saw him accelerate towards them. M/Cpl. Yanush initially believed the BMW was going to hit him and thought it may have come within twenty feet of him. He drew his service weapon, but the vehicle veered left towards M/Cpl. Simmons. He heard one gunshot and saw the vehicle continue toward Corbin Court and down 2nd Street. M/Cpl. Yanush stated he could only observe M/Cpl. Simmons from where he was standing and did not know where the other officers were located.

Civilian Witnesses

Witness 1:

Witness 1 (W1) was working on the day of the incident and got off at 5:00 PM. W1 had spoken with Daniels three times over the phone that day and he seemed fine. However, Daniels was supposed to pick up W1 from work that evening, but he did not come. W1 called Daniels, and he did not sound right. Daniels told W1 he had smoked a joint of tobacco and cocaine. W1 stated that Daniels usually smokes crack in a cigar because he is on probation and it doesn't last as long in his system. W1 took a Lyft home from work. When W1 arrived home, Daniels was

there and was blowing smoke out of his mouth; W1 knew he had been smoking crack cocaine. W1 stated Daniels seemed on edge, and W1 told him to calm down but he continued smoking. W1 told him that he needed to leave. Daniels said he would leave but then became paranoid and kept peeking through the window. W1 stated that Daniels went into the bathroom and "took another hit" on the joint. W1 further stated that when he came out of the bathroom, he was "wired - even more" and W1 again told him to leave.

W1 looked out the window and saw a police officer (M/Cpl. Simmons) driving by and flagged him down. M/Cpl. Simmons said he would circle around the block and come back to the apartment. W1 then went back inside the apartment and told Daniels that the police were outside and that he should leave. Daniels became nervous and went out the back door and paced in the backyard for a while. W1 went back outside to talk with the officer and noticed that Daniels had come around and got into the white BMW. He started driving down the street but then made a U-turn and began driving back toward W1 and M/Cpl. Simmons. Other officers had arrived by then and one blocked Daniels in with a patrol car. W1 heard the officers repeatedly telling Daniels to stop. Daniels then jumped the curb and drove onto the sidewalk.

W1, who was standing on the front steps to the apartment, did not see anyone directly in front of Daniels' car but did see officers standing on the sidewalk. W1 then heard shots fired but did not see who fired them as W1 was not wearing glasses and could not see clearly. W1 stated that s/he does not think Daniels was trying to kill anyone but was very high on drugs and was not capable of operating a vehicle. W1 stated the police "did what they had to do" during the encounter with Daniels.

Witness 2:

Witness 2 (W2) was interviewed in connection with this incident. W2 was standing in their doorway because there was noise outside. W2 saw an Officer in their patrol vehicle talking to W1. The Officer then pulled their vehicle to the end of the block, turned around, and came back. The Officer was waiting in their patrol vehicle as additional patrol vehicles arrived. W2 saw Daniels exit the residence and get into a white BMW parked in front of the residence.

The BMW pulled into the rear parking lot of the apartment complex, located across the street from W2, and turned around. The police vehicles followed the BMW into the rear parking lot in an attempt to stop Daniels from fleeing, but Daniels drove around them and back onto 2nd Street. A police vehicle attempted to block Daniels in, but he struck it with the BMW. Daniels then reversed on 2nd Street, hitting a parked red vehicle. W2 recalled seeing an officer approach the passenger side of the BMW and break the window. W2 could hear the officer yelling at Daniels to stop the car and exit. W2 could also hear the BMW engine revving and more officers yelling to get back. Daniels then "sped off" and drove up on the curb and across the front lawns down 2nd Street, approximately ten feet in front of W2.

W2 believed Daniels was going to run the officers over. W2 backed up and did not witness the shooting. W2 believed the officers were in danger and thought they were going to be struck by the BMW. W2 believed the officers to be in fear for their life.

Physical Evidence

Vehicle parked next to dumpster that Daniels backed into, before driving onto the sidewalk. The glass in the photo is from Daniels' vehicle, after the passenger-side window was smashed.

Sidewalk in front of 3207 W. 2nd Street. The spent shell casing from M/Cpl. David Simmons is in the yellow circle.

Roadway in front of 3207 W. 2nd Street. The spent shell casing from Officer LaVette Williams is in the yellow circle.

Front yard of 3207 W. 2nd Street. The yellow cone depicts M/Cpl. Simmons' shell casing. Vehicle marks can be seen in the grass. M/Cpl. Simmons was standing in the area of the sidewalk when he discharged his weapon.

Daniels' BMW recovered on the 500 block of East 9th Street. A single bullet hole can be seen in the lower portion of the door.

Drone footage, looking down on 3207 W. 2nd Street.

Surveillance Video:

A surveillance camera was located at Wilmington Charter School near 100 N. DuPont Road as a fixed camera on the southeast corner of the building. There is no audio, only video available from this camera. The camera is pointed at the intersection of West 2nd Street and the parking lot behind the apartment buildings. Daniels' white BMW can be seen parked on West 2nd Street behind a red SUV. The front end of both vehicles was pointed towards the dead end of West 2nd Street. Daniels is seen walking from the apartment building and entering the driver's side of the white BMW.

Daniels can be seen driving the white BMW into the parking lot alongside the West Court Apartments. Daniels is seen driving a few feet into the alleyway, stopping, and reversing his car in order to turn around and exit the parking lot. At the intersection of West 2nd Street and the parking lot, Daniels turns right onto West 2nd Street and continues driving.

After approximately 13 seconds, police lights can be viewed on the surrounding buildings. Then, Daniels reappears on West 2nd Street reversing his car towards the dead end of West 2nd Street and reverses into the parking lot. At this point, two WPD vehicles, with lights, are seen following Daniels' vehicle into the entrance of the parking lot. Daniels then shifts his car into drive and attempts to drive around the two WPD vehicles by veering to the left and turning onto West 2nd Street.

After Daniels maneuvers around the two WPD vehicles, he can be seen driving a short distance on West 2nd Street before being stopped by a third WPD vehicle, facing his car head on. Daniels is seen reversing his car as officers get out of the vehicles that were parked in the entrance of the parking lot. Consistent with police witness statements, Daniels is seen on video, backing his car into a parked red vehicle. As soon as Daniels stops his car, Sgt. McLaughlin can be seen running to Daniels' passenger side and smashing the window. Sgt. McLaughlin continues to stand on the outside of the passenger door. At this time, several uniformed officers are seen walking on West 2nd Street, the sidewalk and front lawns towards Daniels' car.

After approximately 10 seconds, Daniels' car is seen accelerating away from Sgt. McLaughlin and turning left towards the sidewalk, and toward the surrounding residences. Numerous officers in the path of Daniels' car are forced to jump out of the way. Daniels can be seen driving on the front lawns of the West 2nd Street residences, and then he quickly drives out of sight of the camera. The surrounding officers turn and move in the direction of Daniels' car, out of view of the camera. Several officers retreat to their respective vehicles, turn around in the parking lot, and pursue Daniels.

Residential Video:

A private residential camera, through the Ring system, is pointed at W. 2nd Street at 6:27 P.M. There is audio and video available from this video. A WPD vehicle can be seen and heard speeding on West 2nd Street with flashing lights and sirens. Soon thereafter, an unidentified civilian is seen walking on the sidewalk and heard talking on the phone in the same direction as

the passing WPD vehicle. Approximately 20 seconds later, a second WPD vehicle, with sirens and flashing lights, is seen and heard driving on West 2nd Street in the same direction.

A second private residential Ring camera is pointed at West 2nd Street at 6:29 P.M. There is audio and video available from this camera. Police sirens can be heard in the background. After a few seconds, a WPD vehicle with flashing lights is seen quickly driving down West 2nd Street. Nothing more can be seen.

Medical Report:

Daniels suffered one gunshot wound to his left bicep area. He had an entry/exit wound with damage to his brachial artery and medial nerve and underwent exploratory surgery for the nerve damage. Daniels was also administered Narcan due to his ingestion of cocaine upon being admitted to Christiana Hospital. A toxicology report was completed by the hospital and showed a positive confirmation for cocaine, as well as a trace amount of alcohol.[5]

Ballistics Report:

Ballistics testing was conducted on the two firearms belonging to M/Cpl. Simmons and Officer Williams. The results of these tests were compared to both the shell casings and projectiles recovered from the scene. WPD issued Officers Simmons and Williams standard black Smith & Wesson Model MP40 .40 caliber handguns with an approved and functional WPD weapon light. Officers Simmons and Williams each discharged their departmentally issued firearms once during the incident.

One spent projectile was recovered from the interior of the driver's door of the 2004 white BMW that Daniels was driving at the time of the incident. That projectile was determined to have been fired by Officer Simmons' firearm. Two spent projectile fragments were recovered from the interior of the passenger side door.[6] These spent projectile fragments were determined to have been fired by Officer Williams' firearm.

[5] Blood Alcohol Level was measured as 11 mg/DL which is approximately 0.008%.
[6] Fragmentation of projectiles can occur upon impact. One projectile can result in multiple fragments being recovered. Here, these two fragments came from one projectile.

Conclusion

The State must determine if the use of deadly force by Officers David Simmons and LaVette Williams against Daniels 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."[7] (Emphasis added.)

Under Delaware law, the state of mind of the law enforcement officer must be considered when determining whether the use of force was justifiable against another person. The specific factual inquiry is two-pronged. The first question is whether the officers actually believed, at the time they intentionally fired their weapons, that such action was necessary to protect themselves or others from death or serious physical injury. The second question is whether the officers were 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, the law requires an examination into whether such force negligently or recklessly created injury or risk of injury to innocent third parties pursuant to 11 *Del. C.* § 470(b).

According to W1, Daniels appeared to be under the influence of drugs before having any contact with law enforcement. Daniels told W1 that he had smoked a joint of tobacco and cocaine, and the toxicology report showed cocaine in Daniels' system.[8] W1 observed Daniels become increasingly erratic and "wired" and determined that he was on edge and not capable of operating a vehicle. Daniels disregarded W1's requests for him to leave and did not appear to have intentions to leave until W1 made contact with law enforcement.

Upon encountering W1 and Daniels, M/Cpl. Simmons immediately recognized Daniels from a prior violent incident. M/Cpl. Simmons recalled that Daniels had a history of resisting arrest by breaking away and fleeing from him and other officers. Daniels' behavior was seemingly so memorable to M/Cpl. Simmons that he remembered it a year later. On March 5, 2020, M/Cpl. Simmons and W1 observed Daniels attempting to flee from the vicinity and avoid police contact,

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[7] 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."

[8] See the medical records which show that Daniels tested positive for cocaine while being treated at the hospital and had consumed cocaine in such an amount that it was necessary for medical staff to administer Narcan as part of his treatment.

just as he had previously done a year before. M/Cpl. Simmons determined that Daniels exhibited similar behavior to his prior encounter and requested backup. As officers arrived, M/Cpl. Simmons informed them of Daniels' prior and current behavior.

Multiple WPD police officers and both independent, civilian witnesses observed Daniels attempt to drive away on West 2nd Street but soon retreat by reversing into the parking lot, followed and enclosed by several police vehicles. Multiple officers and W2 observed Daniels' attempt to then escape by driving around police vehicles and hitting Sgt. McLaughlin's vehicle while doing so. Additionally, multiple officers and W2 further observed Daniels reverse his car again, and back into a parked civilian vehicle. This is further corroborated by the surveillance video which shows Daniels' white BMW reverse into the parking lot, drive around two police vehicles and turn onto West 2nd Street, only to be blocked by a third police vehicle and reverse into a parked red car. Daniels' driving was unpredictable and dangerous.

All police witnesses, including M/Cpl. Simmons and Officer Williams, told investigators that Sgt. McLaughlin gave Daniels verbal commands to stop driving his vehicle and exit the car. Similar to his earlier behavior with W1, Daniels disregarded Sgt. McLaughlin's commands and continued to rev the engine of the BMW and move the gear shift. Daniels remained unpredictable in what he might do next. Multiple police witnesses and both independent, civilian witnesses observed Daniels drive the BMW onto the sidewalk and through the front lawns of the residences where numerous WPD officers and civilians stood. Officer Cintron observed Daniels' vehicle coming within centimeters of M/Cpl. Simmons. M/Cpl. Simmons and Officer Williams were standing on and near the sidewalk and front lawns, in the path of Daniels' car, and were unable to retreat or maneuver because of vehicles that were parked behind them. Multiple police witnesses, as well as W2, believed all the officers who were standing on the sidewalk and front lawns were in imminent danger of being struck by Daniels.

Both M/Cpl. Simmons and Officer Williams told investigators that based on Daniels' action of driving his vehicle onto the sidewalk and front yards in their direction, they believed their lives, the lives of responding officers, and the lives of surrounding civilians to be in jeopardy. M/Cpl. Simmons and Officer Williams each discharged their firearms once.[9] Under Delaware law, it is Officers Simmons' and Williams' states of mind that are at issue. Based on the corroborated facts available, it was objectively reasonable for both Officers to believe their lives, or the lives of others, were in mortal danger.

Furthermore, neither M/Cpl. Simmons nor Officer Williams were reckless or negligent in forming the belief that force was immediately necessary. When initially arriving on scene, M/Cpl.

[9] See the interviews of Officers Simmons and Williams, as well as the ballistics report analyzing the two recovered shell casings and the one spent projectile from M/Cpl. Simmons' firearm and one spent projectile, with fragmented pieces, from Officer Williams' firearm.

Simmons did not engage with Daniels – he waited for backup. Once responding officers, including Officer Williams, arrived, Sgt. McLaughlin gave Daniels repeated, clear commands, to stop and exit his vehicle – after Daniels struck both a police vehicle and a parked civilian vehicle. Both M/Cpl. Simmons and Officer Williams, along with numerous other officers, attempted to approach Daniels in his BMW, on foot, with no weapons drawn. Further, Sgt. McLaughlin deployed his taser, in an attempt to subdue Daniels and stop the situation from escalating further. M/Cpl. Simmons and Officer Williams only un-holstered and then fired their weapons once Daniels drove his vehicle onto the sidewalk and in the direction of M/Cpl. Simmons, Officer Williams, and other responding officers. Therefore, pursuant to 11 *Del. C.* § 470(a) and based on these corroborated facts, the Officers were not reckless or negligent in forming the belief that force was immediately necessary.

Lastly, given that the Officers were justified to use force towards Daniels pursuant to 11 *Del. C.* § 464, we further determine that they were not negligent or reckless in creating a risk of injury to third persons under 11 *Del. C.* § 470(b). M/Cpl. Simmons and Officer Williams perceived innocent civilians and other officers to be positioned behind them as Daniels drove his car in their direction. Officers Simmons and Williams were particular in firing their guns directly at Daniels' moving vehicle, in the opposite direction of where civilians allegedly stood, and only firing once. Based upon the threat presented by Daniels, neither officer was negligent nor reckless in creating a risk or injury to third parties.

Upon careful consideration of the available evidence and the application of expert opinion to that evidence, Officers Simmons and Williams reasonably believed that the use of deadly force upon Daniels was immediately necessary for the purpose of protecting themselves, other officers in the vicinity, and civilians nearby. For these reasons, the Department of Justice concludes the use of deadly force by Master Corporal David Simmons and Patrolman LaVette Williams upon Daniels does not constitute a criminal offense under the laws of the State of Delaware.