

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

SUBJECT: JABRI K. HUNTER

OFFICER: LUIS VAZQUEZ

DATE OF INCIDENT: APRIL 12, 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 Officer Luis Vazquez against Jabri Hunter (“Hunter”). DCRPT reviewed evidence consisting of interviews of civilian and police witnesses, Hunter’s interview, scene photos, surveillance footage, dispatch records, police reports, medical records, DNA evidence concerning the recovered firearm, an ATF Trace of the recovered firearm, 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 sixth report issued by DCRPT since its inception, and it is now the second 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 Hunter’s 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

Just after midnight on Sunday, April 12, 2020, Wilmington Police Officer Harry Mann approached a Gold GMC Yukon which was blocking the right lane on North Walnut Street near the 11th Street intersection. The Yukon was at a traffic light and when the light turned green, the vehicle did not move. Officer Mann could see that the driver appeared to be slumped over the steering wheel and was unconscious. Officer Mann backed behind the Yukon and notified dispatch

¹ Hunter survived his gunshot wounds and was indicted by a Grand Jury on three counts: Possession or Control of a Firearm by a Person Prohibited due to a prior felony conviction, a separate count of Carrying a Concealed Deadly Weapon, and Illegal Possession of a Controlled Substance or Counterfeit Controlled Substance while in a vehicle. An indictment is the charging document in a criminal case and does not itself constitute evidence of guilt.

(WILCOM) of the suspicious vehicle and that its driver appeared unconscious. Assisting Officers Comer and Vazquez responded separately to the stop to assist Officer Mann. Officers Mann and Comer approached the vehicle from the driver's side and Officer Vazquez approached on the passenger's side of the vehicle.

As Officers contacted the driver, later identified as Jabri Hunter, he appeared passed out and slumped over the steering wheel. Hunter was the sole occupant of the Yukon. The Yukon had heavy window tint, but the officers were able to illuminate the inside of the vehicle with their flashlights. The officers started tapping and knocking on the windows of the Yukon to wake up Hunter. The officers were concerned because the Yukon appeared to be in gear and running. After the tapping and knocking, Hunter woke up and appeared startled by the officers' presence. The Yukon then moved forward several feet but came to a stop. The officers announced themselves as police and were giving commands to Hunter to put the vehicle in park and put the window down. Hunter ignored these commands. Officer Comer, from the driver's side of the vehicle, and Officer Vazquez, from the passenger's side of the vehicle, saw Hunter reach into his pants and believed he was reaching for a weapon. Officer Vazquez yelled, "He's reaching! Stop reaching!" Hunter then moved the Yukon forward again, and the flashlights briefly lost their position. As this happened, Officer Vazquez saw Hunter quickly move his hands from his pants – and heard what he believed to be a gunshot. Unbeknownst to Officer Vazquez, Officer Mann had attempted to smash the window of the Yukon with his ASP² as it was moving, while Officer Vazquez remained focus on Hunter, the driver. Officer Mann's ASP did not break the window, but it made a loud bang. The loud bang from the ASP coupled with the sudden movement of Hunter's hands from his pants led Officer Vazquez to believe Hunter was shooting at Officers Mann and Comer on the driver's side of the Yukon. One civilian witness in a separate vehicle that was stopped at the intersection nearby thought they heard a gunshot at the moment they saw the officers try to break the window – and noticed an officer step back and check himself to see if he was shot.³ Because of Officer Vazquez's direct observations in the moments prior, and his belief that Hunter was shooting at police, Officer Vazquez fired three times in Hunter's direction as the Yukon was moving away. After Officer Vazquez discharged his firearm, Officer Mann called out, "Shots fired!" The Yukon coasted across 11th Street, continued into a chain-link fence, and came to a stop.

Officer Comer then smashed the driver's side window of the Yukon with his ASP and unlocked it. Officer Comer removed Hunter from the Yukon and placed him in a seated position on the roadway next to the vehicle. Additional officers arrived on-scene to assist with the incident. While Hunter was sitting on the ground, Officer Lee attempted to apply first aid and treat him for his wounds, but Hunter kept reaching for his waist area. Officer Lee conducted a check of Hunter

² An ASP is a type of tactical baton, and an acronym for Armament Systems and Procedures.

³ An additional civilian witness thought that gunshots came from within the SUV (Yukon) because of the way the officer reacted, as if he was shot.

and located a .380 handgun in his pants, in his groin area. Officer Lee removed the firearm and placed it away from Hunter. Hunter was transported to Christiana Hospital and treated for his gunshot wounds. In addition to the firearm, the police recovered 38 bags of heroin at the scene, and another 26 bags of heroin from Hunter's sneaker at the hospital. At the hospital, Hunter said he had no memory of the shooting and asked if he shot at the police. He said he recalled taking two Xanax pills and smoking marijuana much earlier in the day. The toxicology report for Hunter was positive for fentanyl, benzodiazepines, and cannabinoids. Officers Mann, Comer and Vazquez were not injured during the incident.

Police Witnesses

Patrolman Luis Vazquez:

Officer Vazquez was interviewed by investigators during a walk-through of the scene in the early morning of April 12, 2020. During the walk-through, he explained to investigators what happened, and he detailed the positioning of the vehicle, the other officers, and himself. Officer Vazquez was also interviewed on April 15, 2020. He told investigators that he was assigned to the uniform patrol division and had been working as a Wilmington Police Officer since August 2019. On the night of April 11, 2020 into the morning of April 12, 2020 Officer Vazquez worked the 4:00 P.M. to 3:00 A.M. shift. Due to the COVID-19 pandemic he was operating solo in full uniform and in a marked police vehicle. He heard Officer Mann on the radio call out that a subject was asleep at the wheel of their vehicle, and he responded to the call.

Officer Vazquez said that when he arrived on scene, he responded to the passenger side of the vehicle, a Yukon, while Officers Mann and Comer went to the driver's side. The Yukon was running, in drive, and blocking a portion of the right lane. Due to the window tint of the vehicle, Officer Vazquez utilized his flashlight to illuminate the interior. Officer Mann tapped on the driver's side window in an attempt to wake the driver, but the driver did not wake up. Officer Mann tapped a few more times, and Officer Vazquez smacked the vehicle's passenger side window with his right hand. The driver woke up and appeared "surprised." Officers Vazquez, Mann and Comer announced that they were police, and issued commands to the driver to put the vehicle in park, turn the vehicle off, and put the window down. The Yukon rolled forward three to four feet. Officers continued to give the driver commands such as "put the vehicle in park," "let me see your hands." Officer Vazquez re-positioned himself to observe the driver through the right rear window of the Yukon.

Officer Vazquez told investigators that he had a clear view of the driver because his flashlight illuminated the interior and that he noticed him reaching inside his pants with his right hand. At first, the driver had his hands up, and then the driver suddenly dropped his hands into his lap. Officer Vazquez demonstrated how he saw the driver slide his right hand into the front of his pants and described it "as if reaching for a weapon." As Officer Vazquez saw the driver quickly pull his hands up, and he heard a loud bang and believed the driver had fired at the two officers on the driver's side. Officer Vazquez stated that he then drew his handgun and fired at the driver three times. He then heard Officer Mann say, "Shots fired!" The Yukon began moving

forward again, into a fence. Officer Vazquez followed the vehicle still giving commands to the driver to show his hands.

When the vehicle came to a stop, Officer Comer approached and broke the driver's side window with his ASP. Officer Comer then grabbed the driver to take him out of the vehicle. Officer Vazquez moved to assist and to check on the driver. Assisting units arrived shortly thereafter and removed Officer Vazquez from the scene. Officer Vazquez was transported to the police station and turned over his handgun over for analysis.

Patrolman Harry Mann:

Officer Mann was assigned to C Platoon patrol division and has worked for WPD since March 2019. Officer Mann was interviewed as a part of this investigation and stated that he worked the 4:00 P.M. to 3:00 A.M. shift on April 12, 2020. As Officer Mann patrolled his assigned area in his police car, he noticed a gold GMC Yukon SUV stopped at the intersection of North Walnut Street and 11th Street. The SUV was stopped in the far right turn lane on North Walnut Street with its front pointed towards the sidewalk. Officer Mann noticed that the vehicle did not have a turn signal on. He then drove his car next to the SUV and waited because the traffic light was red. When the traffic light turned green, the SUV did not move. Officer Mann became suspicious and used his vehicle's side alley lights in order to see into the SUV. Although the SUV had tinted windows, Officer Mann observed a person slumped over the steering wheel with their head down. Officer Mann then reversed his police car in order to park behind the SUV and called for backup. In his radio transmission, Officer Mann stated that the driver was potentially asleep at the wheel of the SUV.

Within seconds, Officers Luis Vazquez and Stephen Comer responded to Officer Mann's request for backup. Officer Mann observed Officers Vazquez and Comer in his rearview mirror, driving northbound on Walnut Street towards his car. Once they arrived, Officer Mann advised Officers Vazquez and Comer to use caution when approaching the SUV because he believed the SUV was in drive. Officers Mann and Comer approached the driver's side of the SUV while Officer Vazquez approached the passenger side. Officer Mann stated he used his flashlight to look into the driver side and knock on the window which yielded no response. As he knocked on the window, Officer Mann gave verbal commands for the driver to wake up, put the SUV in park, and shut the car off. Officer Mann further stated it was difficult to see inside the SUV with the flashlight because of the darkness of the window tint. Officer Mann asked Officer Comer if he should use his ASP to break the driver side window, but Officer Comer advised him to hold off. Then, Officer Comer used his flashlight to knock on the driver's window more loudly and repeated similar verbal commands.

Officer Mann observed the driver (Hunter) suddenly sit up and look around. Officer Mann commanded Mr. Hunter to put the car in park as the SUV started rolling forward. Officer Mann then asked Officer Comer, again, if he should use his ASP to break the driver side window; Officer Comer advised him to do so. Officer Mann heard Officer Vazquez say, "He's

reaching!” Officer Mann struck the window several times but could not break it. Immediately thereafter, Officer Mann heard multiple gun shots but did not know who fired or where the shots came from. Officer Mann believed Mr. Hunter had shot himself.

After the gunshots were fired, the SUV moved forward more quickly and hit a fence. Officer Mann used his WPD radio to alert that shots were fired. Officer Mann observed Officer Comer run up to the driver side and break the window. Officer Comer then opened the driver side door and pulled Mr. Hunter out. Officer Mann noticed that Mr. Hunter had blood on his jacket and appeared to have a gunshot wound on his right side. Officer Mann heard Mr. Hunter say that he was in pain and asked why the officer shot him. Officer Mann observed that Mr. Hunter did not have anything in his hands.

As Officer Comer stayed with Mr. Hunter, Officer Mann walked around to check on Officer Vazquez who appeared distraught and confused. Officer Mann did not know that Officer Vazquez had his firearm out. Other officers arrived on the scene and attempted to assist Mr. Hunter as he laid on the ground with his jacket open. When paramedics arrived, Officer Mann informed them that Mr. Hunter had at least one gunshot wound to his right side. At that time, Officer Mann was unaware that Mr. Hunter possessed a firearm. Officer Mann stated that the encounter with the SUV and Mr. Hunter did not seem “right” because Mr. Hunter was non-responsive, which caused him concern.

Patrolman Stephen Comer:

Officer Comer was on the C Platoon and worked in the 11th District. He was working the 8 PM to 7 AM shift the night of April 12, 2020. He drove a marked vehicle and he was in full uniform. His shift overlapped with Patrolman Vazquez and Officer Mann. Officer Comer was at 10th and Pine with Patrolman Vazquez when he heard Officer Mann state over the radio that there was an unconscious motorist at the wheel and requested backup to the area of 1024 North Walnut Street and East 11th Street. Officers Comer and Vazquez headed over and arrived in less than one minute. Officers Comer and Vazquez parked and exited their vehicles. Officer Mann had already exited his vehicle and approached the driver’s side of the motorist’s vehicle, which was a Gold Yukon.

The driver had been passed out but as Officer Comer was approaching, Officer Mann knocked on the driver’s side window to alert the driver and the driver woke up. Officer Comer approached the driver’s side as well, behind Officer Mann. The driver looked startled and looked right at them as Officer Comer arrived. Officer Comer told investigators that the Yukon was in the roadway and stopped on a slant. Officer Comer shined his flashlight into the vehicle as Officer Mann tried to speak to the driver. Officer Mann and Officer Vazquez also shined their flashlights into the vehicle. Officer Comer stated he had a good view of the driver but could not see what other items were in the vehicle because of the tint on the windows.

Officer Comer told investigators that he instructed the driver to open the car door or roll down the window, and to show his hands. He also said he told him to stop moving around in the car. The driver did not obey commands and continued to move around and did not open the driver's side door or roll down the window. Officer Comer saw him reach down into the center console and then put his right hand into his pants. Officer Comer did not see what he took from or put into the console. When the driver reached into his pants, Officer Comer stated that he feared the worst. He told investigators that he feared for his and the other officers' safety, as the driver was not obeying any commands. The Yukon then moved forward five or six feet. Officer Comer felt the situation was getting "sketchy" at that point and he wanted to draw back. He said he did not feel safe and expressed reluctance about whether to "take" the window as he did not know what exactly was in the car. Officer Comer continued to give commands to the driver to show his hands and to open the car door. Officer Comer then heard Officer Vazquez yell, "He's reaching! He's reaching!"

Officer Mann used his ASP and struck the driver's side window once. The window did not shatter, and the car then moved forward again. Officer Comer then heard three gunshots. Officer Comer thought the shots had come from within the vehicle and thought maybe Officer Vazquez had been shot. He could not see Officer Vazquez on the passenger side of the vehicle, and he drew his firearm. After seeing that Officer Vazquez was okay, he moved toward the car with his gun drawn. The car was still moving forward across the road toward a chain link fence. After the car crashed into the fence, Officer Comer smashed the driver's window with his ASP and shattered it after about three strikes. The tint had been holding the glass together. The front end of his ASP fell off on impact and the remainder of the ASP flew into the vehicle.

Officer Comer said that he then unlocked the driver's side door and opened it and quickly scanned the inside of the vehicle. The driver's hands were still visible. Officer Comer pulled the driver out of the vehicle and told him to sit on the ground, as he saw he was injured. He then told Officer Vazquez to issue a code 44 for medical assistance. Other police units began arriving. Officer Lee then arrived and began applying pressure to the driver's wounds. As she was applying pressure, the driver began reaching into his pants again and Comer told him to stop reaching. He moved the driver's hands away from his pants with his foot and held his leg down with his other foot to prevent him from moving. Officer Lee reached into the driver's pants and pulled out a silver handgun, which she placed on the floor inside the vehicle.

Officers Mann and Comer had not communicated with Officer Vazquez before striking the driver's side window. Officer Mann struck the window to try and get the driver to stop moving his car. According to Officer Comer, the sound of the ASP hitting the window echoed in the empty street. Right after Officer Mann struck the window, he stepped back from the vehicle and the vehicle began to move forward. Then Officer Vazquez fired his gun.

Civilian Witnesses

Witness 1:

Witness 1 (W1) lived near the scene and was arriving home at the time of the shooting. W1 was outside their residence on the sidewalk when W1 noticed police lights. W1 heard police say “show me your hands, show me your hands” followed by the police attempting to break the window of the vehicle. W1 then heard several gunshots. W1 described the gunshots and the attempted breaking of the window occurring “almost simultaneously.” W1 did not observe who shot.

After the shooting, W1 observed the vehicle move forward and hit the fence. W1 saw one of the officers become visibly upset but is unsure if that officer fired or not. W1 saw the officers pull Mr. Hunter out of the vehicle.

Witness 2:

Around 12:00 AM on April 12, 2020, Witness 2 (W2) picked up Witness 3 (W3) from work. As they drove northbound on Walnut Street, W2 noticed two WPD patrol cars and a parked SUV in the far-right lane at the intersection of 11th Street. W2 was in the far-left lane and came to a complete stop at the red traffic light on North Walnut Street and 11th Street. There was one car in front of W2’s vehicle, and cars behind W2’s vehicle as well. W2 heard an officer yelling indistinguishable phrases and observed the same officer use a “baton” to “smack” the driver’s window. W2 stated that the “baton” made a loud sound when it hit the window, but it did not break it. After hitting the window again, W2 observed the window shatter and immediately heard two gunshots.⁴

W2 could not determine who shot but believed the gunshots came from within the SUV because W2 observed the officer back away from the driver side and look down at himself as if checking to see if he got hit by the gunshots. W2 initially thought the driver shot the police officer. W2 stated that the officer did not have a firearm in his hand, only the baton. As W2 heard the gunshots, W2 also heard the driver of the SUV scream and observed the SUV drift forward until it hit a light pole. W2 attempted to drive away by reversing but could not get anywhere because of the surrounding cars. W2 watched officers take Mr. Hunter out of the SUV. W2 observed an officer trying to sit Mr. Hunter up and believed officers were attempting to help him. W2 was then able to drive forward and left the scene as more officers arrived.

⁴ During the interview, W2 later stated that they believed they heard 5 to 6 gunshots in total.

Witness 3:

Witness 3 (W3) was picked up from work by W2 and they traveled toward Walnut and 11th Street at the time of the shooting. W3 explained how the SUV was blocking a lane of traffic with the way that it was parked. W3 noticed police at the intersection and that two officers were talking with the driver and yelling at him to roll down his window or they would break it. W3 saw one of the officers strike the window several times and then heard gunshots. W3 said that right when the officer started hitting the window is when they heard the first gunshot. W3 said the officer even appeared to step back check himself to see if he was shot. W3 was not sure where the gunshot came from. W3 then saw the vehicle roll forward and then heard more gunshots.⁵ W3 believed that one of the officers on the driver's side was shooting.

W3 told investigators that the vehicle rolled into a fence. W3 saw the officers check on the driver but W2 pulled away and W3 did not observe anything further. W3 did not see three officers but did see three police vehicles present. W3 is unsure who fired the gun but believed it to be an officer on the driver's side of the vehicle.

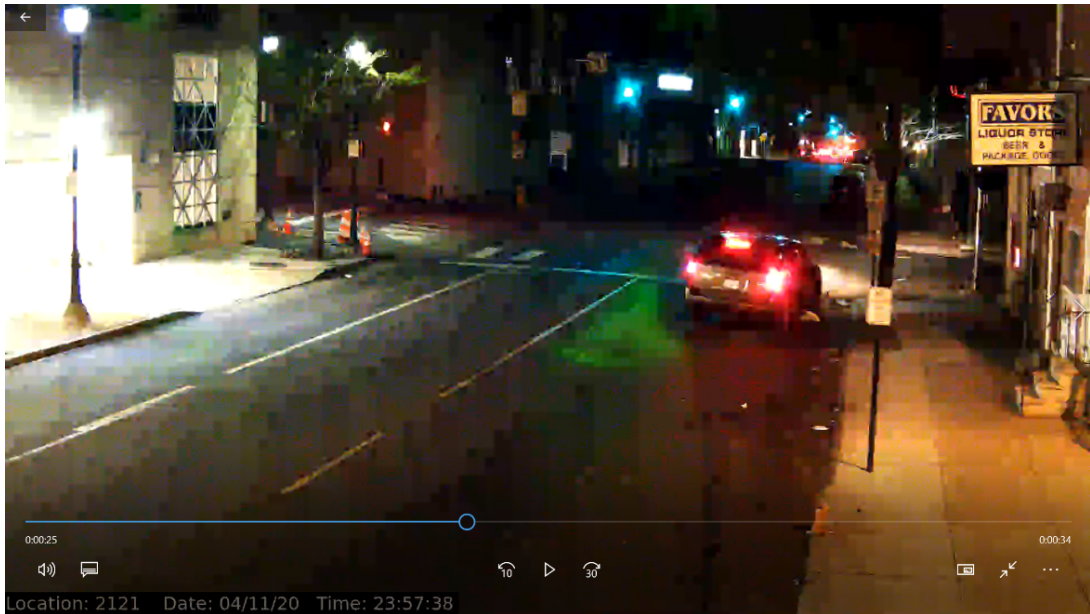
Jabri Hunter:

Hunter was the driver of the Gold Yukon on the night of April 12, 2020 and was interviewed on April 14, 2020 at Christiana Hospital. Hunter advised that he did not remember anything from the night of April 12, 2020, and most of the day before, and did not know why. The last thing he remembered was the morning of April 11 when he was in the Gold Yukon. Hunter said the vehicle belonged to his good friend who is paralyzed but he refused to give his friend's name. Hunter stated he was driving around and had taken some Xanax pills and smoked some marijuana around 11 AM or at noon on April 11. He may have driven to his mother's house on the north side of town that morning as well but was unable to remember.

Hunter asked if he shot at the police. He did not recall possessing the silver handgun found in his pants and stated that he would never pull a gun on a cop, and that he must have been scared. He did not remember parking on North Walnut and East 11th Street and passing out and did not remember how long he was there. He did not remember being shot by the police and only remembered waking up in the hospital. Hunter stated that there may be more Xanax pills in the center console. He did not remember having any other drugs. He also stated that there must have been someone else with him in the car but did not know who that might be.

⁵ W3 indicates that shots were fired in two separate, distinct bursts.

Physical Evidence



Walnut St Red light Camera minutes before Police Contact.



Ring Doorbell Camera minutes before Police Contact.



Yukon up against the fence on 11th Street.



Markers for the spent shell casings.



Recovered .380 handgun from Jabri Hunter. Removed by Officer Lee.

Surveillance Video:

There are surveillance cameras associated with the nearby Bank of America complex. Investigators made contact with the Vice President and Protective Services Manager for Global Corporate Security at Bank of America. Perimeter cameras point towards the Bank of America building, and partially captured police activity in response to the shooting – but not the incident itself. There is an older pole camera at 11th and Walnut that formerly belonged to Bank of America, but the camera is no longer operable and did not record any footage. DCRPT confirmed that this camera does not belong to Downtown Visions.

Red Light cameras installed at the intersection of North Walnut and 11th Street also did not capture the event. Both cameras stopped recording at 12:00 midnight and did not begin recording again until 12:18 A.M. Detectives reached out to Conduent, who owns the camera system, to inquire about the blackout. Conduent responded in writing stating that there was a system-wide issue with their version of software at that time – and that no camera in the city worked for approximately 18 minutes. A copy of the Conduent letter is included as part of our findings in this case.

Residential Video:

A Ring Doorbell camera was located which captured part of the incident. The camera captured the initial contact, showing the Gold Yukon parked on the right-hand side of the street. It captures Officer Vazquez at the passenger side door but cuts off before the shooting. The camera itself times out after 29 seconds and stops recording unless motion activated again, which

is a standard function for doorbell cameras of this type. Detectives initially received the footage from the homeowner. Additionally, law enforcement officers sent a subpoena to Vivint SmartHome, the company that sells and services the doorbell camera, requesting any footage that would have been recorded to their server. Vivint SmartHome provided Detectives with the related video files in their possession along with an "activity history" spreadsheet. The activity history documented every time the doorbell camera recorded and provided a corresponding file name for each video recording. The footage provided by Vivant SmartHome was identical to the footage provided by the homeowner. Furthermore, comparing the recovered video footage to the activity history provided by Vivint SmartHome, eliminates the possibility of any tampering on the part of law enforcement. A copy of the activity history spreadsheet from Vivant SmartHome is included as part our findings in this case.

Medical Report:

Mr. Hunter suffered a gunshot wound to the back side of his right shoulder, with an exit wound in the front of his shoulder. He also suffered a gunshot wound to his right mid-torso area and a projectile was removed from the left abdominal area. He also had a wound on his left palm that appeared to be from a sharp-edged object.

The toxicology report for Hunter was positive for fentanyl, benzodiazepine and cannabinoids. This is consistent with Hunter's unresponsive state at the outset of his contact with police. The presence of benzodiazepine is indicative of Xanax, the cannabinoids are a result of marijuana, and the fentanyl is most likely from pain medication administered at the hospital. The toxicology report and relevant portions of the medical records are included as part of our findings in this case.

Ballistics Analysis:

Ballistics testing was conducted on the firearm belonging to Officer Vazquez and the three cartridge casings recovered from the scene. The three casings were matched to the .40 caliber firearm issued to Officer Vazquez. In addition, a single projectile was recovered from Mr. Hunter's abdomen and compared to the same firearm. That projectile was determined to have been fired from the firearm issued to Officer Vazquez.

Ballistics testing was also conducted on the firearm in the possession of Hunter. The firearm recovered from Hunter was an AMT model Kurz-Backup .380 caliber semiautomatic handgun. The firearm was linked through an automated criminal database to two prior shootings – one on May 27, 2019 in Newark, Delaware and one on September 7, 2019 on N. Harrison Street in Wilmington, Delaware. That automated link was then confirmed through a manual examination of the ballistic evidence by examiners at the Delaware State Police Forensics Firearms Services Unit. The related ballistic reports are included as part of our findings in this case.

The ATF Trace of Jabri Hunter's Firearm:

The ATF trace of the AMT model Kurz-Backup .380 caliber semiautomatic handgun determined the firearm was purchased in Fort Wayne, Indiana, in 1986. The firearm has not been reported stolen. The ATF Trace report accompanies our findings in this case.

Jabri Hunter's DNA on the Firearm:

Samples of Hunter's DNA were compared to swabs containing DNA from the grip, trigger, magazine, a single ammunition cartridge, and slide of the .380 firearm recovered in his possession. The sample swabs were sent to an independent laboratory, Bode Technology, for analysis. The swab from the firearm grip, trigger, and slide all matched Hunter's DNA.

Conclusion

The State must determine if the use of deadly force by Officer Luis Vazquez against Jabri Hunter 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."⁶ (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 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). 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).

⁶ Justification of use of force for the protection of other persons is also applicable, *See* 11 *Del. C.* § 465 "(a) The use of force upon or toward the person of another is justifiable to protect a third person when: (1) The defendant would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant believes to be threatened to the person whom the defendant seeks to protect; and (2) Under the circumstances as the defendant believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force; and (3) The defendant believes that intervention is necessary for the protection of the other person."

After a thorough investigation and review of all the statements, reports and evidence, and Delaware law, the use of force used by Officer Vazquez was not a criminal act under these circumstances.

Officer Vazquez responded to the 1000 block of N. Walnut Street to assist Officer Mann, who was investigating a vehicle that appeared to have a driver asleep or unconscious at the steering wheel. Officer Vazquez approached the passenger's side of the vehicle and Officer Mann and Officer Comer approached the driver's side. The officers made attempts to wake the driver by knocking and slapping the windows and calling to the driver to wake up. The vehicle, a GMC Yukon, was in gear and running. The driver, Hunter, did wake up; however, he failed to obey any commands given for his safety and the officers'. Officer Vazquez could see Hunter with his flashlight despite nighttime and the heavily tinted window, and his focus remained on the driver. Officer Vazquez observed the driver reach into the front of his pants with both hands as if he was reaching for a weapon. Officer Comer, who was on the driver's side of the vehicle, described seeing the driver do the same thing with his hands. Officer Vazquez described how the driver suddenly removed his hands from his pants in a quick motion. The vehicle also moved forward slightly, causing greater alarm to the officers. When the driver quickly removed his hands from his pants, Officer Vazquez heard what he believed was a gunshot and believed that the driver retrieved a weapon from his pants and was shooting at Officers Mann and Comer. The "bang" Officer Vazquez believed was a gunshot lines up with the moment Officer Mann strikes the window with his ASP – and is supported by two civilian witnesses. Officer Vazquez, fearing for his and the other officers' safety, fired three shots through the rear passenger window, striking the driver. The Yukon then traveled across 11th street and struck a fence and came to a stop. Officers Comer and Lee removed the driver from the vehicle and began first aid. Hunter was again trying to get an object from his pants. Officer Lee then located a handgun in Hunter's pants. Jabri Hunter survived his injuries and was transported to Christina Hospital for treatment.

Under Delaware law, and without justification for the use of force, to negligently cause physical injury to another by means of a deadly weapon constitutes the misdemeanor offense of Assault in Third Degree.⁷ Though the ASP strike by Officer Mann on the window of the Yukon was not actually a gunshot, it is was not unreasonable for Officer Vazquez to believe so under the totality of circumstances of this case. An independent civilian witness, W3, corroborates that the sound of the police attempts to break the window was similar to that of a gunshot. Officer Vazquez observed Jabri Hunter reaching into the waistband area of his pants in a manner consistent with retrieving a firearm, prompting his belief that Hunter was arming himself. This caused Officer Vazquez to alert the other officers, "He's reaching!"

Hunter was previously unresponsive, awoke startled, and his vehicle began moving. Hunter's sudden movement with his hands from his pants and his movement and positioning in

⁷ See 11 Del. C. § 611(2).

the vehicle added to Officer's Vazquez's belief that Hunter was reaching for a firearm. At the same moment, Officer Mann struck the driver's side window with his ASP, causing a loud bang. A GMC Yukon is a large vehicle. It is reasonable to believe that the officers' communications or observations of each other – from opposite sides of a large vehicle with window tint, at night – would be impeded in a tense situation where every movement is critical. Officer Vazquez believed Hunter had begun to shoot at the officers. In response, Officer Vazquez discharged his firearm three times, striking Hunter. Police tried to render aid to Hunter while he continued to reach for his pants area before police seized Hunter's firearm.

Officer Vazquez's individual state of mind is of critical importance in determining whether his use of force was a criminal act. The specific factual issue is whether the listed officer actually believed at the time that he fired his weapon that such action was necessary to protect himself or others from death or serious physical injury, so long as the officer was not reckless or negligent in having such belief, or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the use of force. Officer Vazquez's state of mind was apparent as to the belief of Hunter's possession of a firearm when he yelled "He's reaching! Stop reaching!" and his use of force came after Hunter's sudden movement, the vehicle moving forward, and the loud bang, consistent with a gunshot. Officer Vazquez said he believed the officers on the driver's side of the vehicle were being fired upon, and this belief was not negligent under the circumstances – in fact, his belief was corroborated by civilian witnesses. Hunter passed out in the middle of a roadway at night, after he chose to arm himself with a firearm, take Xanax and use marijuana, all of which contributed to his unresponsive state and his reaching for his pants. Hunter's actions, coupled with the size and movements of the vehicle, only made the situation more difficult. Under these circumstances and based on corroborated facts, Officer Vazquez was not reckless or negligent in forming the belief that force was immediately necessary pursuant to 11 *Del. C.* § 470(a).

Lastly, given that the Officer Vazquez was justified as a matter of law to use force towards Hunter pursuant to 11 *Del. C.* § 464, we further determine that he was not negligent or reckless in creating a risk of injury to third persons under 11 *Del. C.* § 470(b). Officer Vazquez fired three shots directly in Hunter's direction, with no persons in the path of the bullets, at a time of night when the surrounding area was not crowded. No third parties were hurt as a result.

Upon careful consideration of the available evidence and the application of expert opinion to that evidence, Officer Vazquez reasonably believed that the use of deadly force upon Hunter was immediately necessary for the purpose of protecting Officer Mann, Officer Comer and himself from Hunter's actions under the circumstances. For these reasons, the Department of Justice concludes the use of deadly force by Officer Vazquez upon Jabri Hunter does not constitute a criminal offense under the laws of the State of Delaware.