

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

SUBJECT: KELLY ROOKS

TROOPER: TROOPER FIRST CLASS DEAN JOHNSON

DATE OF INCIDENT: MARCH 25, 2021

Dated: February 1, 2022

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 of the use of deadly force by Delaware State Police (“DSP”) Trooper Dean Johnson against Kelly Rooks (“Rooks”). DCRPT reviewed evidence consisting of interviews of police witnesses, civilian witnesses, scene photos, police reports, medical reports and forensic firearm reports. 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 Delaware State Police.

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 officer’s actions complied with departmental policies or procedures.

Facts

On March 25, 2021 at approximately 7:15 p.m., Trooper Dean Johnson of the Delaware State Police responded to a complaint at 26970 Danny Drive in Seaford, Delaware. A 911 call had been received from Rooks, who complained that she had been “poisoned” by her neighbors and that she needed to go to the hospital. Medical personnel and Delaware State Police arrived to render assistance. Medical personnel asked Rooks to come with them to the hospital so she could be examined more thoroughly. She refused and she grew agitated with their presence as well as the presence of the Delaware State Police.

Rooks left the living room and walked through the kitchen and into the back bedroom. Witness 2 (“W2”) exited the back bedroom after Rooks entered it and told Troopers that she was “crazy” and “needed to go to the hospital.” After W2 exited the bedroom, Rooks grabbed a long gun from behind the wall, at which point Trooper Johnson and EMT personnel shouted “gun!”

W2 entered the bedroom after Rooks and shut the door, blocking any visual Trooper Johnson had on Rooks. W2 exited the bedroom and told Troopers he had “unloaded the gun” and that the police “needed to leave now.” The Troopers responded that they could not do so.

Troopers continued to shout commands to Rooks to “exit the room and put [her] hands up” and to “drop the gun.” Rooks responded, “Which one of you pigs wants to die tonight?” She then opened the door and raised the gun towards Trooper Johnson and fired a shot, which struck the floor in front of him. Trooper Johnson fired at Rooks and she fell backwards onto the bed. She then started advancing towards Trooper Johnson again, still holding the gun. Trooper Johnson fired another shot and she fell backwards, and the door closed behind her, blocking his visual again. Because he could not establish a visual on Rooks, Trooper Johnson and the other Troopers were directed out of the house and ordered to establish a perimeter by the responding supervisor.

Police Witnesses:

Trooper Dean Johnson:

Trooper Johnson told investigators he was working from 5:00 p.m. to 5:00 a.m. on March 25, 2021. He was responding to a different complaint when he received a dispatch to go to Danny Drive for another complaint. He did not recall what the complaint was for. Trooper Johnson informed Corporal Yencer that he would respond as soon as he finished his current complaint. SUSCOM upgraded the complaint to an overdose, and Trooper Johnson finished up and responded to Danny Drive. He arrived and walked up the ramp in front of the house where Witness 1 (“W1”) told him to come in.

Trooper Johnson went inside and allowed the medical staff to come in with him. He and the medical staff met with Rooks and were told that she had called emergency services and complained of stomach pain. She told them that she believed she had been poisoned. She told them that she had smoked her medical marijuana and she believed she may have overdosed. The medical staff attempted to get Rooks to go to the hospital and she refused. According to Trooper Johnson, Rooks began to get more agitated from the medical staff trying to get her vitals and to convince her to go to the hospital to be checked out. She looked at Trooper Johnson and told him she had not called him. Trooper Johnson responded that she had called 911 and that he was

equipped to deal with medical emergencies or to assist medical personnel. She continued to insist that he should not be there, and Trooper Johnson told her they just wanted to get her help. Rooks said that she thought the medical marijuana was “messing with her stomach.” Trooper Johnson asked how much she had, and she turned and walked towards the back of the house, where her bedroom was located.

As Rooks made her way to the back of the house, Trooper Johnson observed W2, who was in a wheelchair, come out of the back bedroom. W2 told Trooper Johnson that Rooks was “crazy” and “needed to go to the hospital.” Trooper Johnson watched Rooks head into the bedroom and he began to follow her. As Trooper Johnson got into the kitchen, Rooks entered the bedroom and reached behind the door and pulled out a “long gun.” Trooper Johnson could not identify the exact type of gun at the time, but believed it to be either a shotgun or a rifle. Trooper Johnson and Witness 4 (“W4”), an Emergency Medical Technician (EMT), standing nearby both shouted, “gun!” W4, the EMT, exited the house after the gun was pulled out. W2 spun around to look at Rooks and then entered the room after her, putting himself between Trooper Johnson and Rooks. The door closed after W2 entered. Trooper Johnson got on the radio and said that Rooks had a gun and a possible hostage, W2. Trooper Johnson issued commands to “come out with your hands up” and “leave the gun.” W2 exited the room and said he had unloaded the gun and that everyone needed to leave the house. Trooper Johnson told him they could not, that Rooks needed to be evaluated at the hospital.

W2 did not want to leave the house, so Trooper Cannon entered the house and wheeled W2 out of the way, then came up beside Trooper Johnson to assist. Corporal Yencer also entered and took up a position behind Trooper Johnson. All three issued commands to “place the gun down” and “come outside with your hands up.” Trooper Johnson heard what he believed to be Rooks picking up the gun. He yelled at her, “Place the gun down!” Rooks replied, “Which one of you pigs wants to die tonight?” He told investigators that when he heard her say that it sent a “shockwave of fear through me that I’ve never experienced in my life.” Trooper Johnson relayed her statement over the radio. He told her again, “Come out with your hands up, we’ll get you to a hospital.”

After he said this, Rooks opened the bedroom door and began lifting the gun towards Trooper Johnson. She fired a shot towards Trooper Johnson and he returned fire. He does not remember how many shots he fired. After he shot, he saw her fall backwards towards the bed.

She then got up from the bed and, with the shotgun, advanced towards Trooper Johnson. Trooper Johnson said he interpreted this as an “ongoing threat” and fired another shot and she fell again. When she fell, the door closed. Trooper Johnson reloaded his firearm and began moving towards the bedroom. He relayed over the radio that he did not have visual on Rooks because the door was closed. Trooper Johnson was ordered by Sgt. Aviola, the responding supervisor, to leave the house and establish a perimeter because he could not establish a visual on Rooks.

Trooper Jermaine Cannon:

Trooper Cannon told investigators he was working from 3:00 p.m. to 3:00 a.m.. Trooper Cannon was on another complaint when he received a call to respond to Danny Drive for a disorderly or domestic incident. Trooper Cannon said while on his way to Danny Drive the incident was upgraded to an overdose. Trooper Johnson was the first Trooper to arrive with Trooper Cannon and Corporal Yencer arriving shortly after. As Trooper Cannon walked up to the house he saw an Emergency Medical Services (EMS) member standing outside. The EMS personnel informed him that Rooks was inside and had stated she was “extremely high” on marijuana.

Trooper Cannon entered the home and Trooper Johnson was already inside talking to Rooks and W2. Trooper Johnson told Rooks not to enter her room and to come back. W2 and Rooks disappeared into the back room. Trooper Cannon then exited the home and saw two EMS personnel run out of the house saying “she has a gun.” Trooper Cannon then went back inside and saw Trooper Johnson with his service weapon drawn and pointed at the back room. Trooper Johnson was issuing commands to “put the gun down.” Trooper Cannon could not see Rooks, she was behind the door, but the door was cracked a bit. Trooper Cannon said he could see movement in the room, but it was not clear. W2 was still in the bedroom with Rooks.

Trooper Cannon grabbed W1 and removed her from the home. W1 stumbled over the coffee table as he took her outside. Trooper Cannon got W1 outside and then re-entered the home. Trooper Cannon heard Rooks say “you pigs are going to die tonight” and “pick which one of you will die tonight.” W2 was saying, “The gun is not loaded, I unloaded the gun.” W2 then exited the room and Officers ordered him to show his hands. W2 hesitated, but then came

towards the Officers and was escorted out of the house. Trooper Cannon could see Rooks in the room with a long gun of some sort.

After escorting W2 out of the house, Trooper Cannon re-entered the house and saw the back room door open again. He heard commands from Trooper Johnson to “drop the gun.” He then heard a single gunshot, followed by three to five gunshots. Trooper Cannon drew his service weapon, but did not have a clear shot because of Trooper Johnson being in his line of fire. Trooper Cannon saw the door close and heard again, “Which one of you pigs wants to die tonight?” Trooper Cannon asked Trooper Johnson if he had been hit, and he said he had not been. Trooper Cannon continued issuing commands to Rooks to show her hands. Trooper Johnson was then escorted out of the house.

The Friday before the incident, Trooper Cannon had called after Rooks reported that she heard her neighbors saying that they had stolen checks from her mother. Rooks’ mother told Trooper Cannon that she did have a check that was missing, but did not believe it was stolen, and reported that Rooks “does this all the time.” The incident was closed.

Corporal Brandon Yencer:

Corporal Yencer was interviewed by investigators in connection with this incident. He advised that he was on duty from 5:00 p.m. to 5:00 a.m. He received a call to respond to Danny Drive for a welfare check. As he was making his way there the call was upgraded to an overdose. He was also advised that the caller had a mental health history. Trooper Cannon and Corporal Yencer arrived at the same time. EMS and Trooper Johnson had already arrived. When Corporal Yencer entered the house he saw W1 in the front room. He could not see Rooks or W2, both of whom were already in the back room. Corporal Yencer was advised that Rooks was high on medical marijuana.

Corporal Yencer heard someone yelling “gun” and saw the EMS personnel run out of the house. Trooper Johnson said he saw the gun, and initially Corporal Yencer thought W2 had the gun. Corporal Yencer saw Trooper Johnson draw his service weapon and he drew his as well. The Officers issued commands to Rooks to exit the room. W2 exited the room and put his hands up. Corporal Yencer ordered him to come over to the Officers and he complied. He did not want to leave the house, saying, “I’m not leaving this house.” Corporal Yencer told him he had

to leave and he assisted W2 out of the house while Trooper Cannon escorted W1 out of the house. As Corporal Yencer was escorting W2 out of the house he told Corporal Yencer the “gun isn’t loaded.” As he was outside with W2, Corporal Yencer heard Trooper Johnson and Trooper Cannon issuing commands to “drop the gun.” He also heard Rooks yell something loudly about dying, but could not make out what exactly was said.

As Corporal Yencer re-entered the house he drew his service weapon. He heard the gunshots, but his view was blocked. Corporal Yencer could not differentiate the rounds, but he heard Trooper Johnson say that Rooks had fired at him. By the time Corporal Yencer got a view, the door had mostly closed behind Rooks. Rooks yelled something from inside the room, but could not determine what she was saying. Corporal Yencer and the other Troopers issued commands to Rooks to come out of the room, but there was no response. As more Officers arrived they were told to leave the house.

Civilian Witnesses

Witness 1:

Witness 1 was interviewed by investigators and told them that Rooks had a car accident years ago which affected her demeanor. The medications she was prescribed kept changing. She was prescribed oxycodone for pain management and medical marijuana. W1 said that within the last week Rooks began acting more paranoid, saying that the neighbors were entering her house and stealing from her. W1 said that Rooks had been fine all day, but suddenly started screaming and saying she had been poisoned. W1 believes that Rooks had smoked her prescribed marijuana earlier and believe that that may have made Rooks paranoid. Rooks called 911 to report that she had been poisoned. W1 tried to calm Ms. Rook down, telling her that no one had come in the house to poison her. Soon after Rooks called 911, police and medical personnel arrived.

W1 said three officers entered first. The officers told Rooks she needed to go to the hospital. According to W1 Rooks asked if her W1 could come with her and the police said no. W1 said that’s when Rooks ran to her bedroom. W1 saw Rooks pull out a gun. W1 said that she thought Rooks had a BB Gun, but that it actually turned out to be a shotgun which belonged to W2. W1 said that Rooks was in her bedroom with the gun, the door was half closed. W1 said

that W2 was in the kitchen. W1 said that the police “threw us out”, referring to W1 and W2. W1 said that Rooks had never fired a gun in her life and wouldn’t even know how to fire it. W1 was outside on the road with police officers when she heard 3 shots.

W1 was interviewed again by investigators over the phone. W1 stated that if W2 did not have a gun, Rooks would not be dead. W1 asked why Officers didn’t tase Rooks. W1 stated that Rooks was terrified and that Officers “busted” into the house like it was a drug den. W1 said that Officers threw her on the floor and dragged her out of the house. W1 said that she saw Officers fire three times. W1 said that Officers should have shot Rooks in a place that would not have killed her.

Witness 2:

W2 was interviewed by investigators and stated that he wanted a lawyer. He refused to give any statement regarding the incident.

Witness 3:

W3 is an EMT who was interviewed by investigators in connection with this incident. W3 stated that he was called out to respond to a potential overdose. He arrived on scene after Trooper Johnson. W3 and another EMT entered and made contact with Rooks. Rooks seemed confused and non-compliant. She did not know the date and refused to go to the hospital. W3 said that Rooks appeared to be in an altered mental state and due to this, was unable to sign a patient refusal form.

W3 said two additional Troopers arrived and he stepped out to update them on the situation. While W3 was outside he heard W4 yell “gun, gun, gun” and saw him run out of the house. He heard someone else saying, “get out of my house.” W3 saw W1 exit the house and he assisted W1 to get behind cover. W3 heard the gunshots come from inside the house. After leaving the residence, W3 never re-entered the home.

Witness 4:

W4 is an EMT who was interviewed by investigators in connection with this incident. W4 stated that he was called out to respond to a potential overdose or poisoning. W4 said that he and W3 entered the house, along with a Trooper. W4 began talking to Rooks who was

complaining of abdominal pain. W4 told Rooks they needed to take her to the hospital for an evaluation. Rooks asked if W1 could come with her and W4 said no. Rooks then refused to go to the hospital. Rooks told W4 she had been poisoned but did not know with what. W4 said Rooks made no threats of harm to him or anyone else.

W4 said that W2 came out from the backroom into the kitchen and began saying, “you guys know what’s going on, you’ve been here before.” W4 walked to W2 to discuss what was happening and W2 told them they “had no right no be in the house.” W4 asked what was going on with Rooks. Rooks then went into the back room where W2 came from and grabbed a long gun. W4 could not determine what kind of gun it was but saw her raise the gun to her shoulder. W4 stated that he believed she had “intent to shoot someone.” W4 then shouted, “gun, gun, gun” and ran out of the house.

Once outside, W4 heard the Officers giving multiple orders to “put the gun down.” W4 saw one of the Officers escort W1 out of the house. W4 stated that W1 did not want to leave the house. W4 heard W1 state, “don’t shoot her, it’s only a BB gun.” Shortly thereafter W4 heard multiple gunshots coming from inside the house, approximately five to eight in rapid succession. W4 grabbed W1 and threw her on the ground for cover.

Evidentiary Materials

911 Call:

The first call received by 911 was from Rooks who said that she needed an ambulance, and gave her address. She did not know the phone number she was calling from. She told the operator that “they’re watching me and they’re freaking out. It’s my boyfriend.” The operator asked if she needed an ambulance and she said “yes, and the neighbors.” In the background someone says “are you out of your fucking mind” and the phone call abruptly ends.

The second call was from the 911 operator to Rooks. The call was received, but immediately hung up.

The third call was another call from the 911 operator to Rooks. No one picked up.

The fourth call to 911 was from Rooks who again gave her address and requested an ambulance. This time she gave the number she was calling from to the operator. She told the

operator that “my neighbors just poisoned me. Someone just poisoned me.” The operator asked her what she had been poisoned with and she replied, “my marijuana.” The operator asked her if she was “feeling violent” and she said, “no, I’m feeling really sick. I need an ambulance, please. Please give me an ambulance.” The operator asked how her breathing was and she replied, “oh my goodness” and then the call ended.

The fifth call was from the 911 operator to Rooks. The call was forwarded to voicemail.

Prior Police Contact:

Rooks made multiple recent calls to 911 prior to March 25, 2021. On January 21, 2021 Rooks called 911 to report that W2 was being aggressive towards herself and W1. Police arrived and W2 refused to give a statement and told them to “get the fuck out of my house.” No injuries were apparent and Rooks and W1 declined to press charges.

On March 16, 2021 Rooks called 911 to report that she believed her neighbor was videotaping her while she was in her room. Rooks told Police she was bi-polar and was on medication. Police contacted the neighbor who denied videotaping Rooks. Police determined no crime was committed and cleared the case.

On March 19, 2021 and again on March 20, 2021 Rooks responded to the lobby of Delaware State Police Troop 5 and claimed that her neighbor had installed a GPS device on her vehicle. She also claimed she could hear them talking about her via radio interference and that they had installed surveillance cameras inside of her residence. She said she could hear the neighbors through the television and the walls. On March 19, 2021 Officers responded to her residence to investigate the claim, determining that it was false. Due to the fact that this was the third time in a week that Rooks had “exhibit[ed] paranoid and schizophrenic behavior” the Police contacted Mobile Crisis. Mobile Crisis arrived and made contact with Rooks and coordinated with her physician for a follow up in the coming week.

On March 21, 2021 Rooks again called 911 to report that her neighbors had stolen W1’s checks. Police spoke to W1 who insisted that Rooks had mental health issues and denied that the checks had been stolen. The case was closed.

On March 23, 2021 Rooks again called 911 to report that her neighbors had installed cameras in her house and made threats to her. Police responded to the report and Rooks was distraught and angry. She stated that her neighbors had cameras and microphones installed in her house for years. W1 stated that she was worried about Rooks who was acting increasingly “crazy” for the last week. W1 stated that Rooks is bi-polar and takes medications and has been hallucinating. Police contacted Mobile Crisis to intervene due to the mental health issues. Mobile Crisis advised there was no need for Police to remain on scene so they left.

Autopsy Report:

Rooks’ autopsy revealed she died from multiple gunshot wounds. A penetrating gunshot wound to the left shoulder and chest, a superficial perforating gunshot wound to the lateral left abdomen, a penetrating gunshot wound to the abdomen, a penetrating gunshot wound to the proximal left thigh and a perforating gunshot wound to the proximal left thigh. Three projectiles were recovered, one from the right lung, one from the left buttock, and one in the posterior proximal right thigh. The other two gunshot wounds had corresponding exit wounds.

Toxicology Report:

The toxicology report revealed that Rooks was positive for Benzodiazepine and Cannabinoids, specifically Nordiazepam 47 ng/ml, Diazepam 7.3 ng/ml, Delta 9 Tetrahydrocannabinol 57 ng/m and Delta 9 Carboxy-Tetrahydrocannabinol 67 ng/ml.

Gunshot Residue Analysis:

Swabs were taken from Rooks hands, one from the back of the right hand, one from the right palm, one from the back of the left hand and one from the left palm. These swabs were tested for the presence of lead, antimony and barium, common residue from the discharge of a firearm. Any result which had a combination of two of the three elements is classified as a two-component particle while any result which has only one element is classified as a one component particle. Two-component particles are more likely to indicate the recent discharge of a firearm.

The results of the swabs show that from the back of her right hand, ten (10) two-component particles were found. The right palm had nine (9) two-component particles. The

back of the left hand had eleven (11) two component particles and the left palm had seven (7) two component particles.

Motor Vehicle Recorder (MVR) Recordings:

MVR, or dash mounted cameras, footage is available from Trooper Cannon, Trooper Johnson and Trooper Yencer. The shooting incident is not captured visually by the police vehicles. However, between 55:00 and 1:02:30 on Trooper Cannon's MVR, the audio of the incident can be heard through his microphone. Trooper Cannon calmly makes numerous attempts to get Rooks to comply, while using de-escalating language.

After 47:50 on Trooper Yencer's MVR, EMTs can be seen trying to provide safe cover to W1 as the shooting occurs. The EMTs stay near W1 and one helps W1 to her feet around 51:20. W1 walks off camera around 52:10.

Scene Photos:



Photo of Kelly Rooks' residence



Vantage point from Trooper Johnson's position. Marker 8 is shotgun round.



Damage to the floor caused by the shotgun round.



Shotgun used by Rooks.

Forensic Firearm Report:

Trooper Johnson's firearm was received by the Forensic Firearms Services Unit and tested. The handgun is a Sig Sauer P320 9mm semi-automatic handgun. Seven (7) Shell Casings were recovered from the scene and were determined to have been ejected from Trooper Johnson's handgun. In addition, seven (7) projectiles were recovered, all of which were determined to have been fired from Trooper Johnson's handgun.

Multiple deformed pieces of lead were recovered from the scene which were consistent with 00 buckshot. Shotshell wadding and wad was also recovered. A spent 12-gauge shotshell casing was recovered from the scene that was labeled as having been loaded with 00 buckshot, as well as an unfired 12-gauge shotshell loaded with 00 Buckshot. A 12 Gauge New England

Firearms Company shotgun was recovered from the scene, and it was determined that the recovered spent shotshell casing was fired from that shotgun.

E-Trace Report:

The ATF Firearms Trace Summary in this case shows that Rooks purchased the shotgun in September of 2003. A copy is included below:

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

NATIONAL TRACING CENTER

Phone:(800) 788-7133 Fax:(800) 578-7223

Print Date: July 21, 2021



FIREARMS TRACE SUMMARY

Trace Number: T20210226867 Request Date: May 28, 2021 Completion Date: June 23, 2021

SGT DAWSON
DELAWARE STATE POLICE
1441 NORTH DUPONT STREET
DOVER, DE 19901
PHONE: (302) 739-5851 Ext:

Badge No: 452
Investigation No: 05-21-17247

FIREARM INFORMATION

Manufacturer: HARRINGTON &
RICHARDSON 187...
Model: PARDNER
Caliber: 12
Serial Number: NT266314
Type: SHOTGUN
Country: UNITED STATES
Importer:
Obliterated:
Identifying Marks:
NIBIN:
Gang Name:

RECOVERY INFORMATION

Recovery Date: 03/25/2021
Time to Crime: 6401 days

26970 DANNY DR
SEAFORD, DE 19973
Possessor: KELLY ROOKS
DOB: 12/19/1969
POB: UNITED STATES

DEALER INFORMATION

WAL-MART SUPERCENTER #2460
751 NORTH DUAL HWY
SEAFORD, DE 19973
Phone: (302) 628-1668
Ext:

FFL: 85100070

SGT YEICH
DELAWARE STATE POLICE
RD 2 BOX 148
BRIDGEVILLE, DE 19933-0000
PHONE: (302) 856-5334 Ext:

Badge No: 466
Investigation No: 05-21-17247

PURCHASER INFORMATION

Purchase Date: 09/15/2003

KELLY E ROOKS
26960 DANNY DR
SEAFORD, DE 19973
DOB: 12/19/1969
POB: BALTIMORE, MD UNITED STATES
Race: WHITE Height: 5 ft 6 in
Sex: Female Weight: 230 lbs
ID 1: DE DRIVER'S LICENSE: 1234573
ID 2: SOCIAL SECURITY: 0523

Contact the local ATF office for additional information.

ADMINISTRATIVE INFORMATION

Conclusion

The State must determine if the use of deadly force by Trooper Dean Johnson against Rooks 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.”¹ The State will also determine whether the use of deadly force by those Officers was permitted pursuant to Title 11 Section 465, use of force for the protection of other persons.²

Under then-existing Delaware law, the subjective state of mind of any person, in this case the law-enforcement officer, is the legal test to determine whether the use of force was legally justifiable against another person. The specific factual inquiry is two-pronged. The first question is whether the officer(s) actually believed, at the time they intentionally fired their weapon, that such action was necessary to protect themselves or others from death or serious physical injury. The second question is whether the officer was reckless or negligent in having such belief, or in acquiring or failing to acquire any knowledge or belief, which is material to the justifiability of the use of force. 11 *Del. C.* § 470(a). If such force is determined to have been justified, we will also examine whether such force negligently or recklessly created injury or risk of injury to innocent third parties pursuant to 11 *Del. C.* § 470(b).

The question presented is whether the use of force by Trooper Johnson towards Rooks was immediately necessary for the protection of self (or others) against the use of unlawful force by Rooks. In addition, this belief must not have been recklessly or negligently formed. For the purposes of this analysis, and in keeping with our common practice, we will review whether this belief was reasonable under the circumstances. After reviewing the available evidence, we conclude that Trooper Johnson was objectively reasonable in believing force was necessary for protection of himself and his fellow Officers and medical personnel.

Based upon the evidence available, we conclude that Trooper Johnson reasonably felt in fear for his own life, and the lives of others when Rooks asked, “Which one of you pigs wants to die tonight” and then raised and fired a gun at Trooper Johnson. Rooks was in an agitated state and went to the back bedroom and closed the door where Trooper Johnson could not fully see

¹ Because this event took place on March 25, 2021 the law in effect at the time is what controls the analysis. The passage of SB 147 has changed the legal inquiry into use of force, however that change was after this event and therefore does not apply.

² “(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.”

her. Trooper Johnson was able to see that she had a long rifle. Trooper Johnson, and other officers present, issued multiple commands for her to come out of the room and to drop the weapon. While W2 informed the officers that the gun was unloaded and not a threat to them, this turned out to not be true. Rooks made the statement, heard by multiple officers, “which one of you pigs wants to die tonight.” When she exited the room, she raised the long gun up and fired at Trooper Johnson, striking the floor in front of him. Trooper Johnson fired back. We conclude that because Trooper Johnson reasonably felt in fear for his life and the lives of the other officers when he used force, such use was justified pursuant to 11 Del. C. § 464.

Additionally, Trooper Johnson was neither negligent nor reckless in forming his belief that force was necessary for the protection of self or others. Trooper Johnson saw Rooks bring out the firearm, but did not fire immediately. Trooper Johnson did not deploy force until force was used against him. After Rooks fired the gun at Trooper Johnson, Trooper Johnson responded by firing at her. This decision to use force was neither reckless nor negligent.

Because Trooper Johnson was justified to use force pursuant to 11 Del. C. § 464, we further determine that he was not negligent or reckless in injuring or creating a risk of injury to third persons under 11 Del. C. § 470(b). No third person was in Trooper Johnson’s line of fire, and all other people had been evacuated from the home prior to his use of force. As a result of Trooper Johnson’s use of force, no third persons were injured.

Finally, SB 148 now requires as a matter of law that, if DCRPT issues a public report on the use of force, the report must include the race of the law enforcement officer who used force, the race of the individual on whom force was used, and whether race was a relevant or motivating factor. Trooper Johnson is a white male. Rooks was a white female. There is no evidence to suggest that race was a relevant or motivating factor in the use of force in this case.³

Upon careful consideration of the available evidence and the application of expert opinion to that evidence, it is determined that Trooper Johnson reasonably believed that the use of deadly force upon Rooks was immediately necessary for the purpose of protecting himself and others.

³ If race were a relevant or motivating factor in any shooting, the criminal charging analysis would include a discussion of Hate Crimes under 11 Del. Sec. 1304(b).

For these reasons, the Department of Justice concludes the use of deadly force in this case does not constitute a criminal offense under the laws of the State of Delaware.