

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

SUBJECT: MICHAEL BARTIE

TROOPER: CPL. DANIEL KORENYI

DATE OF INCIDENT: NOVEMBER 19, 2021

Dated: July 19, 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 Corporal Daniel Korenyi against Michael Bartie (“Bartie”). 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.

Facts

Bartie and his fiancée, Witness 1 (“W1”), reside in a mobile home in the Pot-Nets – Creekside community located at 25693 Crab Alley East, in Millsboro. At the time, Bartie and W1 had a nine-month-old son. On November 19, 2021, around 4:00 p.m., Bartie arrived at the residence but did not enter. Instead, Bartie had been consuming alcoholic beverages on the porch of the residence (four empty pint bottles of Fireball Whiskey were later located during scene processing). W1 eventually requested Bartie enter the residence and spend time with their child. Shortly thereafter, a verbal altercation escalated when W1 saw Bartie had the “Tinder” dating application on his cell phone. Bartie then locked himself in a bedroom with their infant child. W1 recognized noises emanating from the bedroom – the sounds of a rifle being loaded and the Velcro adjustment of a ballistic vest. W1 was familiar with the sounds from her military background.

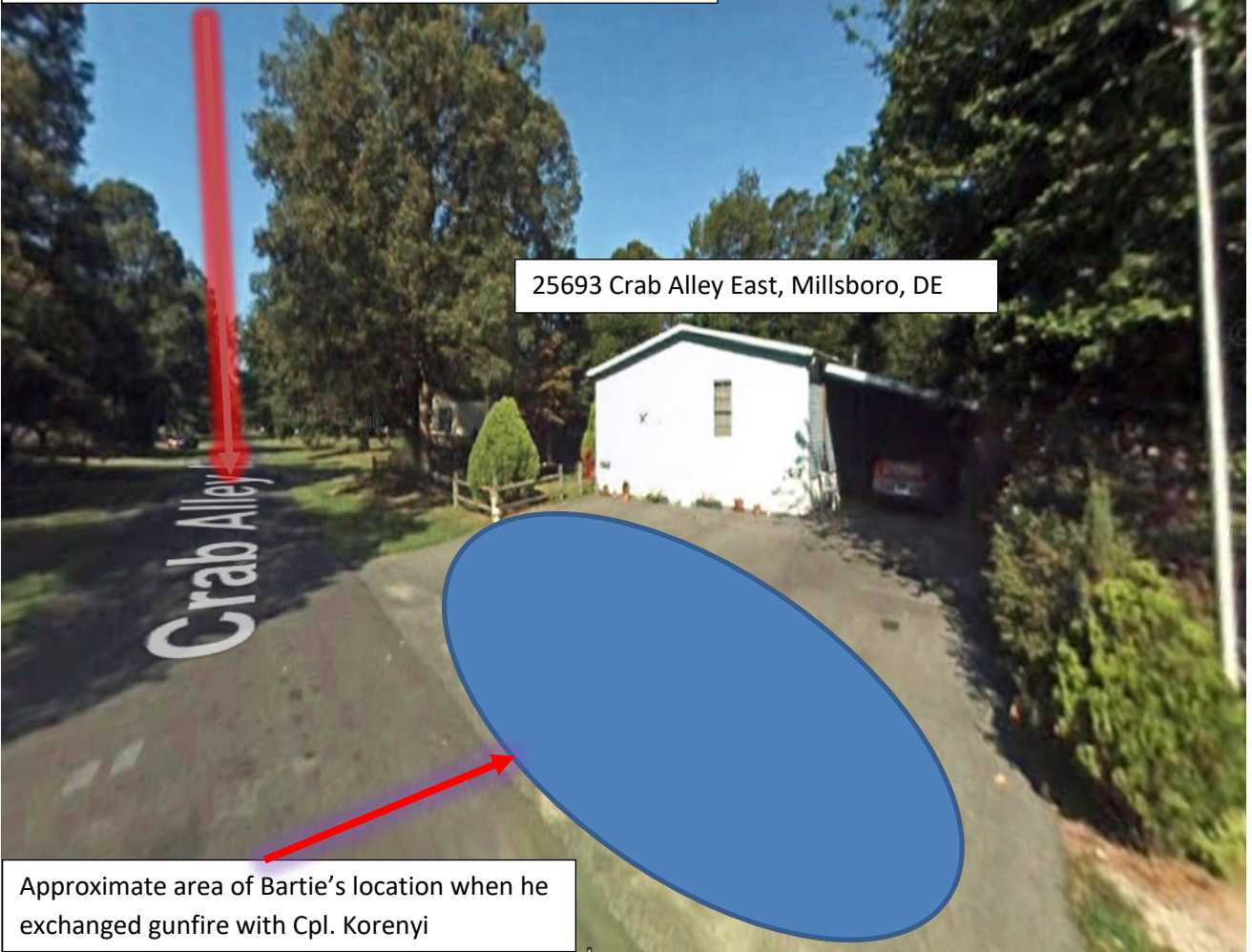
On November 19, 2021 around approximately 8:25 p.m., W1 called 9-1-1 to report a domestic violence incident, and Troopers with the Delaware State Police (“DSP”) responded. One of the responding Troopers, Cpl. Daniel Korenyi, was familiar with the residence and Bartie, because Cpl. Korenyi had a previous encounter with Bartie during a 2021 relinquishment of firearms from a Protection From Abuse (“PFA”) petition. Bartie’s biological father in New Jersey had obtained the PFA, but later dropped it. Thus, Bartie’s firearms had been returned to him.

Troopers contacted Bartie by phone, but he was uncooperative. Bartie told Troopers that if they approached his residence there would be “a shootout.” A Trooper approached the door of the residence and knocked, and Bartie responded by saying “fuck off.” Bartie further advised the Trooper that he better be wearing “level four plates.” Troopers continued to call Bartie but he remained uncooperative.

Troopers retreated approximately 300 feet from the house and established cover behind their vehicles. Bartie exited the house wearing body armor and carrying a rifle. He had a flashlight in his hand which he shone at Troopers, using a strobe feature. Because of the darkness, Troopers were unable to see Bartie well. Troopers then heard gunshots originating from Bartie’s location. Corporal Korenyi returned fire using his department issued rifle, striking Bartie. Troopers on scene could not see Bartie at this point, but a DSP helicopter overhead confirmed Bartie was on the ground and moving near a vehicle. Troopers issued commands to Bartie to move into the street without his weapon so they could render aid. Bartie did not comply with these commands. Witness 2 (W2) arrived on scene and approached Bartie and removed his body-armor and weapon. Troopers then moved in to render aid and entered the house to secure the child inside. Mr. Bartie suffered four gunshot wounds, two entry and two exit. Rifle casings were located in the area where Mr. Bartie exited the house. Mr. Bartie survived this incident and was arrested.

Area of Troopers at time of shooting.

Intersection of Come About Circle @ Crab Alley East



25693 Crab Alley East, Millsboro, DE

Approximate area of Bartie's location when he exchanged gunfire with Cpl. Korenyi

Police Witnesses:

Corporal Daniel Korenyi (DSP):

Cpl. Korenyi was interviewed in the presence of his attorney in connection with the shooting. He was informed of his *Miranda* rights, waived his rights and agreed to speak with investigators voluntarily about the incident. He was dispatched to a domestic violence complaint involving a weapon. Cpl. Korenyi had previously responded to the same residence to seize weapons, including an AR-15, a shotgun, a handgun and various ammunition. That seizure was conducted pursuant to a protection from abuse order (“PFA”). Cpl. Korenyi was required to return the weapons to Bartie after the PFA was dropped. During the initial seizure of weapons, Bartie had informed Cpl. Korenyi that he also possessed body armor.

Due to Cpl. Korenyi’s prior contact with Bartie he was asked to call Bartie in the residence and attempt to talk him down. Bartie told Cpl. Korenyi that the argument began when his girlfriend caught him on the dating app Tinder. Cpl. Korenyi asked Bartie why he was acting this way, drinking and putting on body armor. Bartie told him, “Yeah, I’ve been drinking but I’m not drunk.” Bartie refused to come outside with his infant child, telling Officers they “could try to come inside and see him.” Cpl. Korenyi believed this to be a threat based upon Bartie’s irritation and the tone of his voice. Bartie then hung up.

Another Officer, Cpl. LaPlaca went to go knock on what he thought was a neighbor’s door to evacuate them while Troopers set up a perimeter, but it was actually Bartie’s house. Bartie responded that they “better have level four plates”, referring to body armor. Troopers then backed up further, to establish a larger perimeter. Cpl. Korenyi again made contact with Bartie via phone; it was on speaker so Cpl. Fezza could also hear the conversation. Cpl. Korenyi asked him what the plan was, and Bartie responded that “females always get custody.” Cpl. Korenyi asked Bartie what the plan was with the baby and Bartie responded that it was “none of his fucking business.” Cpl. Korenyi recalls Bartie saying he was ready to “let off” or “let loose” before he hung up.

Shortly thereafter, Bartie opened the front door to his residence and came outside with a flashlight. Cpl. Korenyi shouted at Bartie, “Hey Bartie” and Bartie turned towards him, putting the flashlight on him. Cpl. Korenyi stated he was “very uncomfortable” with the flashlight pointed at him. Cpl. Korenyi ducked behind his vehicle and asked Bartie what was going on. Bartie took a few steps towards his location. Cpl. Korenyi left his position and moved further

back to different cover to give himself more space. Cpl. Korenyi turned to look at another Officer and in his peripheral vision saw a flash and then heard a gunshot. He lifted his service rifle and pointed it at Bartie. He heard Cpl. Fezza shout “Mike drop the gun.” He saw Bartie walk to the left, towards his residence and saw another flash, he was unsure if it was the flashlight or a gunshot that caused the flash. He heard another gunshot and saw Bartie holding the flashlight against his body, and saw a black object in his hands. After seeing the black object in his hands, Cpl. Korenyi fired towards Bartie.

Corporal Michael Fezza (DSP):

Cpl. Fezza was interviewed by investigators in connection with the incident. P.M.Cpl. Fezza was on routine patrol when he was dispatched to a domestic dispute with possible firearms involved. He responded to the scene and was told that a male suspect was inside with an infant and armed with at least an AR-15 and possible handguns. He remembered that at least one Trooper on scene was familiar with the suspect and his possession of firearms. He was directed to set up a perimeter around the house. Cpl Fezza and other Troopers had pulled up in front of a residence intending to set up the perimeter without realizing that they were in front of the male suspect’s residence. Cpl. Fezza recalled Cpl. Korenyi establishing contact with the suspect and putting the conversation on speakerphone. The suspect, Bartie, was very fearful of police siding with the female and him losing custody of his child.

Cpl. LaPlaca went to alert the resident in the residence that there was a situation nearby, not realizing that it was the suspect’s house. Cpl. LaPlace heard male inside shout something like “you better have some sort of armor.” Once Troopers realized they were at the suspect’s house, they backed up their vehicles and repositioned about 75 yards from the residence. Cpl. Korenyi had multiple phone conversations with Bartie, but Bartie continued to get agitated and would end the conversation. Cpl. Fezza heard Bartie make multiple statements over the phone, including something similar to “if you guys come in here, you’ll need body armor.” Bartie was refusing to let them get the child, and stated that he was not going to give up his child. During the last call, Cpl. Fezza recalls Bartie being extremely agitated and stating something to the effect of, “I’m getting ready to fly off.”

After the final call, Cpl. Fezza saw someone exit the residence. Cpl. Fezza told the other Troopers, "Hey, I think I've got someone leaving the house." Because of the male subject's position, Cpl. Fezza wasn't sure at first whether the male subject was Bartie or a neighbor that Cpl. Fezza had seen earlier. He saw the silhouette of a person and the glow of a cigarette. The subject was shining a light at them and using a strobe feature. Cpl. Fezza shouted "Michael, we have to make sure that you're not armed, we just want to talk to you, it's not a big deal." Cpl. Fezza saw the flashlight turn off and then heard gunshots and saw muzzle flash. Cpl. Fezza said that it looked like the subject was pointing the gun at the Officers. He then heard approximately three or four gunshots from Cpl. Korenyi who was behind cover at the rear of a patrol vehicle. Cpl. Fezza made a radio transmission that shots had been fired and Officers had returned fire.

Cpl. Fezza was not sure if Bartie had been struck or was "playing possum." He heard moaning and attempted to address Bartie using a public address system on a vehicle. A DSP helicopter overhead confirmed that Bartie was moving and that an AR-15 was about a foot away from him. Soon after, a white Buick drove up on the other side of the residence and W2 exited the vehicle. W2 was upset that Bartie had been laying on the driveway for approximately half an hour with no medical attention. W2 picked up Bartie's tactical vest and AR-15 and threw them on a nearby driveway. Officers approached and shouted commands for Bartie to show his hands as one hand was still underneath his body. W2 called the Officers cowards and told them Bartie was not armed. Troopers rolled Mr. Bartie over and did not find any additional weapons.

Corporal Robert Spanier (DSP):

Cpl. Spanier was interviewed by investigators in connection with the incident. Cpl. Spanier caught up with Cpl. Fezza and followed him to the scene. He was advised that the suspect had body armor and guns, and that a child was involved. Cpl. Spanier heard the phone conversation between Cpl. Korenyi and Bartie via speakerphone. Cpl. Korenyi made multiple phone calls to Bartie to obtain more information. Bartie became increasingly agitated and stated that he would not come out and that he would defend himself. Cpl. Spanier saw a Trooper whom he believed to be Cpl. Martinez knock on the door of a residence that turned out to be Bartie's. Cpl. Spanier recalls Bartie responding to the knock by saying, "I hope you've got level four plates." As a result, Troopers repositioned farther away from the house.

Cpl. Spanier heard Cpl. Fezza say, “Hey, there is somebody coming outside.” He then heard a gunshot from the direction of the residence and moved behind a nearby patrol vehicle. Cpl. Spanier could see Bartie strobing the flashlight at the cars. As Cpl Spanier was ducking behind the vehicle he heard additional shots fired and then silence. He could not see Bartie afterwards. The Troopers attempted to use the public address system to call Bartie out. He heard a low moan but wasn’t sure if it was coming from Bartie or elsewhere. He saw the flashlight strobing on the ground. The DSP helicopter confirmed Bartie was on the ground with a gun near him. Soon after W2 drove up in a car and grabbed Mr. Bartie’s gun and vest and threw them. Cpl. Spanier then ran up to Mr. Bartie with other Troopers and handcuffed him. He saw “two holes” in Mr. Bartie’s back so he began administering first aid. Afterwards, Cpl. Spanier stayed with the infant child.

Corporal Kelsey Oliphant (DSP):

Cpl. Oliphant was interviewed by investigators in connection with the incident. She told investigators she was working patrol on the night of November 19, 2021. She was dispatched to a domestic incident involving weapons. Dispatch advised that the suspect had a nine-month-old baby in the residence and had body armor and some weapons. Upon arrival she made contact with the other Troopers. Cpl. Korenyi was communicating with Bartie via speakerphone. Cpl. Oliphant was directed to set up a perimeter but was then told they had the wrong house and had set up too close so they had to reposition further back. Cpl. Oliphant could hear the conversation with Bartie on speakerphone and heard him becoming increasingly agitated.

Cpl. Oliphant heard the Troopers state, “Hey what are you doing Mike” as Bartie came outside. She heard gunshots but was unsure of how many rounds. She did not realize Cpl. Korenyi had fired until after the shooting had ceased. Troopers held their positions because they were unsure if Bartie was baiting them or not. The DSP helicopter returned from re-fueling and established a visual. W2 then showed up and disarmed Bartie.

Corporal Paul LaPlaca (DSP):

Cpl. LaPlaca was interviewed by investigators in connection with this incident. He was dispatched to a domestic incident involving a weapon. While en route, he received additional information that the 9-1-1 caller had advised police that the suspect had been drinking all day

and that the suspect would not allow the caller to leave with her child. The suspect was also in the possession of an AR-15. Cpl. LaPlaca met up with the other Officers on scene and helped establish a perimeter around what they believed to be the residence. To avoid startling the neighbors, Cpl. LaPlaca approached a mobile home to advise them of what was going on. He knocked on the door and the suspect inside yelled, "I hope you have level four plates, and fuck off." Cpl. LaPlaca quickly retreated from the door and advised the other Officers that they were directly in front of the suspect's residence. Cpl. LaPlaca repositioned his vehicle and was attempting to take cover when he heard a radio transmission that the suspect was outside of the residence. He could not see the suspect but heard the gunshots coming from the direction of the residence. After the first shots, he heard a second round of shots coming from where the other Troopers were positioned. He heard radio transmissions that the suspect was still moving. He approached the residence as other Troopers were taking Bartie into custody.

Corporal Herney Tovar (DSP):

Cpl. Tovar was interviewed by investigators in connection with this incident. He advised that he was assigned to the Special Operations Response Team ("SORT") team and was called to a domestic incident on the night of November 19, 2021. The shooting occurred prior to his arrival. Upon arrival he entered the house and located a child in an infant car seat in the master bedroom.. He had another Trooper watch the infant while he went back outside. He exited the house and stood guard by Bartie's rifle until the evidence technicians arrived.

Sergeant Phil Kebles (DSP):

Sgt. Kebles was interviewed by investigators in connection with this incident. He advised that he was assigned to the SORT team and was called to a domestic incident on the night of November 19, 2021. He arrived after the shooting. He learned from the DSP helicopter overhead that Bartie was on the ground with a rifle near his body. He worked with Cpl. Fezza to try and get a better view from the ground. He was concerned that Bartie was trying to bait Troopers into getting closer. W2 soon drove up in a car and approached Bartie. W2 yelled at Troopers for not attending to Bartie. W2 moved the rifle and the body armor away from Bartie, allowing Troopers to come and take Bartie and W2 into custody. Afterwards, Sgt. Kebles moved into the residence with other Troopers and located the child unharmed and in a car seat.

Corporal Leonard DeMalto (DSP):

Cpl. DeMalto was interviewed by investigators in connection with this incident. He advised that he was assigned to patrol and was called to a domestic incident on the night of November 19, 2021. Upon arrival, he made contact with the reporting person, W1. W1 advised that Bartie had been on the front porch of the residence when W1 asked him to come inside and tend to the infant child. Bartie was on the dating app Tinder. W1 told Bartie that she was done with him and leaving with the child. Bartie told W1 that she wasn't leaving and took the child from W1 and locked himself in the residence. W1 told Cpl. DeMalto that W1 could hear Bartie loading a magazine and looked in the bedroom window and observed him donning body armor, a rifle and ammunition. Cpl. DeMalto and W1 did not observe the shooting.

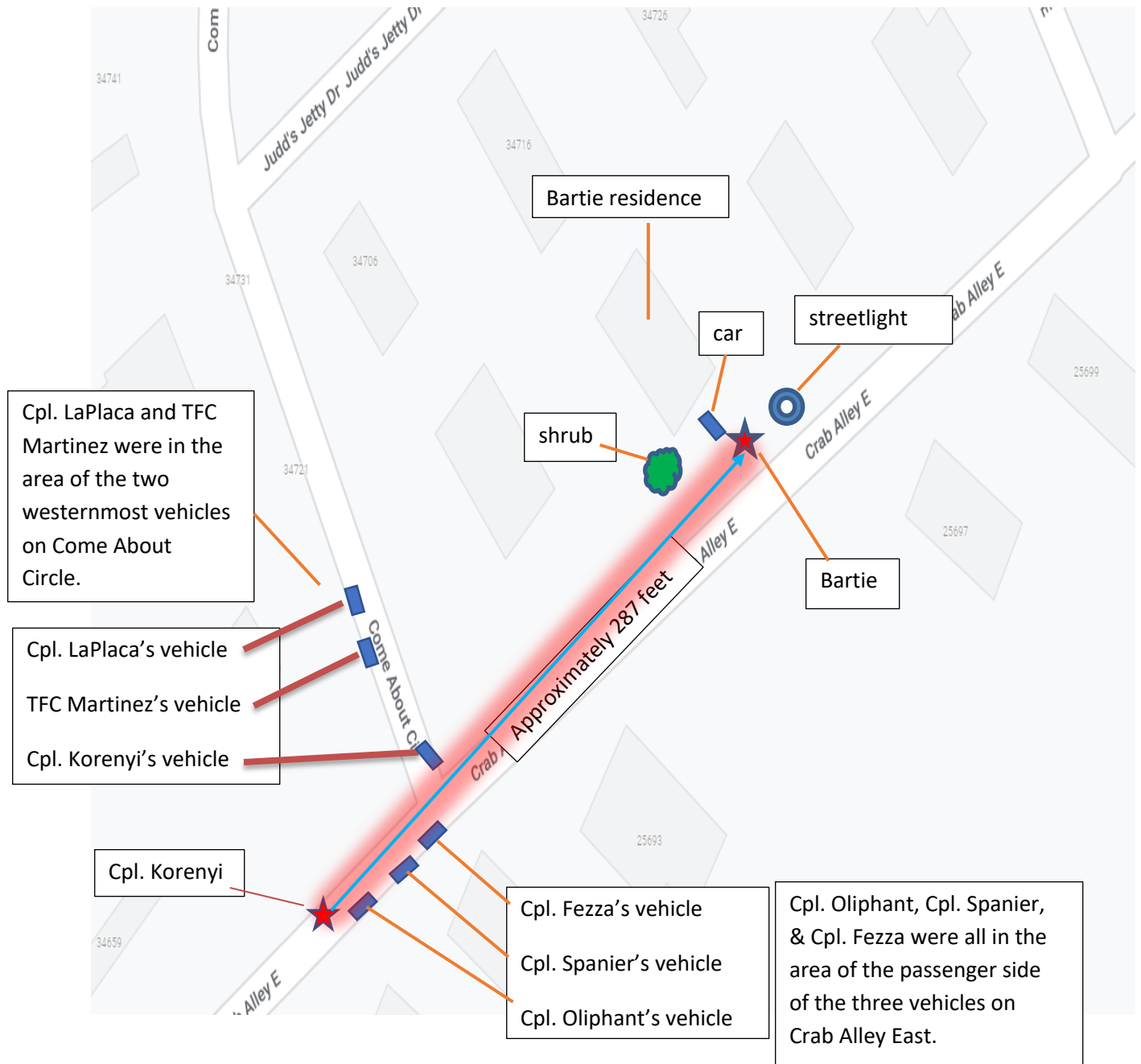
Trooper First Class James Martinez (DSP):

Trooper Martinez was interviewed by investigators in connection with this incident. He advised that he was assigned to patrol and was called to a domestic incident on the night of November 19, 2021. Upon arrival Trooper Martinez made contact with the other Troopers on scene and began establishing a perimeter. After Cpl. LaPlaca knocked on the door of the residence and determined it was the suspect's, they positioned farther away from the residence. After repositioning, Trooper Martinez heard gunshots but did not observe any muzzle flash. Then Trooper Martinez heard additional gunshots coming from the location of the Troopers. After W2 arrived and was taken into custody, he transported W2 back to the police station.

Cpl. Kim Layfield (DSP):

Cpl. Layfield was interviewed by investigators in connection with this incident. She advised that she was assigned to Troop 7 desk when she was called about a domestic incident on the night of November 19, 2021. She called the suspect several times from her desk in an attempt to establish communication prior to Cpl. Korenyi arriving on the scene. Bartie yelled at her and hung up, telling her that he would not come out and that Witness 1 was not going to take his son. Cpl. Layfield requested Cpl. Korenyi to contact Bartie and establish communication with him in an attempt to deescalate the situation. Cpl. Layfield was talking to the Troop 7 Commander about the situation when she received notification that Bartie had left the residence. She then heard that shots had been fired. She responded to the scene from Troop 7. Upon

arrival she checked on Cpl. Korenyi and attempted to call out to the suspect to have him move into the street but she received no response. W2 arrived soon after Cpl .Layfield and approached Bartie, moving his firearm and body armor. Afterwards, Cpl. Layfield entered the residence to secure the child inside.



Civilian Witnesses

Witness 1:

W1 was interviewed by investigators and told them that Bartie had been sitting on the porch of the residence drinking a large quantity of alcohol. W1 asked Bartie to come inside and tend to their child. Bartie said no and W1 observed that Bartie was on the dating app “Tinder.” W1 told Bartie that W1 was leaving with their child. W1 put the child into a car seat when Bartie entered the residence and removed the car seat from W1’s hands. W1 said they were going to call the police. Bartie locked himself in the master bedroom with the child. W1 went outside and looked in the bedroom window and observed Bartie “preparing his rifle and armor.” W1 re-entered the residence and Bartie pushed W1 out and locked the door. W1 left at the advice of the 9-1-1 operator. W1 then texted W2 and informed them of what happened.

Witness 2:

W2 was interviewed by investigators and stated Bartie had an alcohol problem. W2 stated that Bartie and W1 have issues due to his excessive drinking and his use of dating apps. W2 said that police “had every right to shoot [Bartie].” W2 travelled from their residence for more than an hour knowing that Bartie had been shot. Bartie had called W2 and stated to him, “They shot me, those motherfuckers shot me.” After speaking to Bartie, W2 called 9-1-1 and was told that an ambulance would not respond until the scene was secured because Bartie was armed and had threatened to shoot people. Upon arrival, W2 took Bartie’s gun and armor and threw them away. Police then rushed in and handcuffed Bartie and W2.

Physical Evidence

Body-worn Cameras:

No body-worn camera footage is available as no Officer was provided with or equipped with a body-camera at the time.

In-Car Camera Recordings (MVR):

Multiple vehicles were equipped with cameras, however no audio is available. The videos have poor visuals due to the lighting in the area of the incident, however they show the suspect's flashlight strobing in the distance.

Cellular Records for Michael Bartie's Cell Phone:

Bartie's cell phone received 4 calls between 8:43 p.m. and 9:53 p.m. by numbers connected to the Delaware State Police. Nine of those calls were answered, varying in length between two seconds to approximately ten minutes. No text messages were sent or received on the phone after W1 called 9-1-1 to report the incident. Bartie made calls to both 9-1-1 and W2 during the incident. The phone also had a text message providing a Tinder code.

9-1-1 Call:

W1 called 9-1-1. On the recorded call, W1 stated that Mr. Bartie had taken the infant and that "police are very familiar with him." W1 can be heard shouting at Bartie to give back the baby. W1 stated that Bartie has been drinking and that he has a shotgun, a rifle and a pistol. W1's voice breaks and she tells police to hurry up. W1 states that Bartie has pulled out ammo. W1 begins screaming that Bartie has a gun and tells the operator that he has locked himself in a room with the infant.

Medical Report:

Mr. Bartie suffered four gunshot wounds (two entry wounds and two exit wounds). One entry wound was located on the lower abdomen and one entry wound was located on the left buttock. Multiple bullet fragments were located inside each injury. Mr. Bartie required surgery to repair a severed bowel and was determined to have a fractured right hip. Mr. Bartie survived this incident and was arrested.

An ethanol test was conducted and determined that Bartie had approximately 256 mg/dL of ethanol in his blood. That translates to approximately 0.256% BAC.

Gunshot Residue Analysis:

A GSR analysis was not conducted because Mr. Bartie required emergency surgery.

Forensic Firearm Report:

Police recovered two spent .223 caliber rifle casings from the driveway of 25693 Crab Alley East, in the area Bartie was located when Troopers heard gunfire and witnessed a muzzle flash. The ArmaLite multicaliber rifle that Bartie possessed was observed to have a spent .223 caliber rifle casing wedged into its firing chamber. The configuration of a spent casing lodged in a firing chamber is commonly known as a “stovepipe” malfunction that prevents the weapon from loading any more projectiles into its firing chamber. Bartie further had in his possession a Springfield Armory XP-3 9-mm handgun when apprehended, along with a magazine with four rounds of 9mm ammunition.

The ArmaLite multicaliber rifle contained a magazine loaded with twenty-seven live .223 caliber rounds of ammunition. A ballistic vest was also recovered containing three rifle magazines loaded with a total of fifty-one .223 caliber live rounds.

Inside of the residence the following items were recovered: a rifle magazine from the kitchen counter; a rifle magazine by the bed; a shell casing from under the nightstand; ammunition on the closet floor; a box of ammunition and two rifle magazines from the closet; a box of ammunition with 9mm ammo; two additional rifle magazines from a handgun case; and a Mossberg 500AT 12-gauge shotgun with two slug shot rounds and three buck shot rounds in the butt stock holder. A knife was recovered from the driveway, along with a flashlight and an empty bottle of Fireball whiskey.

Of the shell casings recovered, one shell casing recovered from the chamber of the ArmaLite rifle and two spent shell casings recovered from the driveway of the residence were identified as having been fired from Mr. Bartie’s ArmaLite rifle. One projectile located on the floor inside the garage of a neighbor’s house was identified as having been fired by Cpl. Korenyi’s assigned Sig Sauer rifle.

Conclusion

The State must determine if the use of deadly force by Trooper Daniel Korenyi against Bartie 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] reasonably 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.” 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.¹

Under Delaware law, the objective 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) reasonably 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, despite reasonably believing force was necessary, was the officer nevertheless 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 questions presented are: 1) whether the use of force by Cpl. Korenyi towards Mr. Bartie was immediately necessary for the protection of self (or others) against the use of unlawful force by Mr. Bartie; and 2) whether that belief was reasonable and not recklessly or negligently formed. After reviewing the available evidence, we conclude that Cpl. Korenyi was objectively reasonable in believing force was necessary for protection of himself and his fellow Officers.

¹“(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 reasonably believes to be threatened to the person whom the defendant seeks to protect; and (2) Under the circumstances as the defendant reasonably 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 reasonably believes that intervention is necessary for the protection of the other person.”

A 9-1-1 caller informed police that Bartie was armed with several firearms while intoxicated and in the immediate presence of a child. Cpl. Korenyi had specific knowledge of Bartie's possession of multiple firearms from a prior encounter. Bartie made statements evincing his intent to get into a shootout with police. And ultimately, Bartie began shining a strobing flashlight at Officers while simultaneously shooting his weapon. The flashlight's strobing feature interfered with Officers' ability to see clearly in the dark and made it difficult to ascertain exactly where, or at whom, Bartie was shooting his rifle. Cpl. Korenyi reasonably believed that the intoxicated and agitated Bartie was firing at Officers, and he and returned fire to protect himself and his fellow Officers. We conclude that because Cpl. Korenyi 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, Cpl. Korenyi was neither negligent nor reckless in forming his belief that force was necessary for the protection of self or others. Cpl. Korenyi had communicated with Bartie on the phone in an attempt to de-escalate the situation. Bartie had refused multiple overtures to disarm and exit the house. Bartie exited the house with body armor, a rifle and a strobing flashlight which interfered with Officers' ability to see in the darkness. Cpl. Korenyi's conclusion that force was necessary was reasonable based upon these facts and was neither recklessly nor negligently formed. Because Cpl. Korenyi 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 Cpl. Korenyi's line of fire, and no third persons were injured. Finally, pursuant to 29 Del. C. § 2553(a)(3)(b), DCRPT determines that, as a matter of law, race was not a relevant or motivating factor in the use of force. Cpl. Korenyi is a white male. Bartie is a white male. There is no evidence to suggest that race was a relevant or motivating factor in the use of force in this case.²

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

² 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).