

FINAL REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

USE OF DEADLY FORCE BY THE DOVER POLICE DEPARTMENT

SUBJECT: TYRONE KERSEY

OFFICER: PATROLMAN SAMUEL SEIBERT

DATE OF INCIDENT: JUNE 11, 2023

Dated: September 20, 2023

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, via non-fatal shooting, by the Dover Police Department (“Dover PD”) against Tyrone Kersey (“Kersey”). DCRPT investigators and attorneys reviewed evidence consisting of video footage, dispatch records, victim and witness interviews, police interviews, scene photos, and medical records.

This DCRPT report relates to a case involving a pending criminal defendant. 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 Criminal Division prosecutors involved in DCRPT’s decision-making. The outcome of Kersey’s criminal case must be determined solely and exclusively on the evidence presented at trial, and in accordance with the Court’s rules. 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 whether a law enforcement officer’s use of deadly force constitutes a criminal act. The Department of Justice does not establish or enforce internal police policies concerning the proper use of deadly force by law enforcement officers. Law enforcement agencies are responsible for establishing and enforcing guidelines for the use of force by their officers and for determining whether an officer’s actions were consistent with such guidelines in a given case. This report expresses no opinion whether involved officers’ actions complied with departmental policies or procedures.

Facts

Tyrone Kersey (“Kersey”) resided with his girlfriend, and their one-year-old son, at 409 Sussex Avenue, Dover, Delaware. On June 11, 2023, Dover Police received a 911 call from a woman claiming someone was trespassing at this residence. (An investigation later revealed that a domestic dispute between Kersey, his girlfriend, and an additional female led up to the call to police). Police responded to the call and observed a man (Kersey) with a handgun standing in front of 409 Sussex Avenue. Two additional women, one holding a child, were also present on or near the sidewalk.

Mobile Vehicle Recorder (“MVR”) footage from Dover PD Officer Patrolwoman Brittney Finnegan (“Ptlwm. Finnegan”) showed Kersey move towards her patrol car with his handgun as he racked the slide and yelled “What the f*** are you doing here, you’re not needed here!” Ptlwm. Finnegan set up her patrol car further down the street for safety until additional police units could arrive.

Once stationary, Ptlwm. Finnegan called out commands to Kersey and gave updates via radio to police. Her commands and updates were captured on her body worn camera (“BWC”). Kersey fired his gun into a nearby car now occupied by his girlfriend and child, who entered the vehicle while he was distracted by the police. After Kersey fired the round, Ptlwm. Finnegan announced over the radio, “he just shot one round off” and, “whoever is on that side, be careful.” Patrolman Samuel Seibert (“Ptlm. Seibert”) arrived on scene as Ptlwm. Finnegan continued to give commands to Kersey and said over the radio, “somebody get out a rifle.”

Ptlm. Seibert also yelled command for Kersey to get on the ground and to drop the gun. Kersey ignored the commands and pulled his girlfriend and child out of the car and towards the residence. Ptlwm. Finnegan confirmed to Ptlm. Seibert over the radio, “that’s correct, he shot” and “he’s got a hostage, he’s pulling on somebody.” Ptlwm. Finnegan began to say “he’s using a hostage to get back inside” when another single gunshot is heard on her BWC. The single gunshot was a rifle round fired by Ptlm. Seibert. The round struck Kersey. Ptlwm. Finnegan ran up to Kersey and got the gun away from him. Additional officers converged and the young child can be heard crying in the background on the BWC. Ptlm. Seibert also had an active BWC which captured his commands and activity.

Statement from Officer who Used Force

Patrolman Samuel Seibert

On June 11, 2023, Ptlm. Seibert responded to 409 Sussex Avenue. after hearing Ptlwm. Finnegan make a radio transmission that she had just been approached by a male suspect (Kersey) with a gun. While en route, Ptlm. Seibert heard Ptlwm. Finnegan make a second radio transmission stating that Kersey had fired a round.

When Ptlm. Seibert arrived on scene, he observed Kersey pulling on a woman in a car while holding a gun in his hand. Ptlm. Seibert racked his rifle and began giving commands to Kersey. Kersey pointed the gun at Ptlm. Seibert. Ptlm. Seibert told investigators that he thought to himself, “oh s***, and I am waiting for the [muzzle] flash to go off.” Kersey was screaming and ignoring the officers’ commands. Ptlm. Seibert felt that his own life was in danger, as well as the lives of the woman and her child whom Kersey was now pulling towards a residence. Ptlm. Seibert observed this as a hostage situation where the female victim was being used as a human shield. He felt he needed to stop Kersey before he was able to enter the residence.

Ptlm. Seibert observed a gap between Kersey and the victims as Kersey was pulling on them with one hand and holding the gun with the other. Ptlm. Seibert also observed that Kersey and the victims were in front of a brick backdrop. Ptlm. Seibert aimed his rifle at Kersey and fired.

Police Witness

Patrolwoman Brittney Finnegan

On June 11, 2023, Ptlwm. Finnegan was dispatched to a trespass complaint at 409 Sussex Avenue. As she approached the scene in a marked patrol vehicle she observed a group of people which included a Black man (Kersey) and a Black woman on the sidewalk in front of the residence. At first, she did not recognize that the man and woman on the sidewalk were the parties involved in the trespass complaint. Ptlwm. Finnegan noted that Kersey looked upset as she parked the patrol vehicle and saw that Kersey had a gun in his hand.

As Kersey began to approach Ptlwm. Finnegan, he was yelling and cursing at her, saying something similar to “What the f*** are you doing here? We don’t need you here.” Pltm. Finnegan then drove eastbound on Sussex Ave. away from Kersey as she made a radio transmission reporting that she encountered a Black male with a gun. Ptlwm. Finnegan turned the vehicle around to face westbound. She gave Kersey verbal commands to drop the weapon and to get on the ground, and continued to provide updates via radio. Kersey did not follow the commands; instead, he yelled back at her.

Kersey fired a round to his south. Ptlwm. Finnegan believed that the subjects she had seen on the sidewalk were inside the residence, though they were actually inside a car near Kersey. Ptlwm. Finnegan told investigators that she did not fire at Kersey because she was armed with a handgun instead of a rifle and she observed bystanders in the backdrop.

When Pltm. Seibert arrived on scene, Pltm. Finnegan could hear him yelling commands at Kersey but could not see him due to the glare from the emergency lights on his vehicle. Ptlwm. Finnegan saw that Kersey was now pulling a woman, who was holding a child, from a nearby vehicle. Kersey pulled the woman near him and Pltm. Finnegan notified dispatch that Kersey had taken a hostage. Pltm. Finnegan continued to yell commands at Kersey as he moved towards the residence. Pltm. Finnegan noted that at some point there was space between Kersey and the woman. When Pltm. Seibert fired his rifle, Ptlwm. Finnegan saw Kersey fall to the ground and the woman stop moving. Pltm. Finnegan retrieved Kersey’s handgun and helped provide him medical care.

Civilian Witnesses:

Witness 1

Witness 1 told investigators that she engaged in an argument with Witness 2, when Witness 2 was holding her child and refused to return him to her. Witness 1 called the police and then was pushed to the ground by Kersey. Witness 1 and her child were in her car when police arrived. She saw Kersey yell at police and stated, “I’m not going anywhere without my son.” Kersey then pulled Witness 1 from the car. Kersey was telling the police not to come near him. Witness 1 did not observe that Kersey had his gun out at this time. She knew that Kersey had a gun holstered at his hip but did not know when he took it out. Witness 1 recalled hearing two gunshots: one to her right, and another from the direction of a police officer. Kersey stated that she was previously involved in multiple incidents of domestic violence with Kersey, included times when he choked her.

Witness 2

Witness 2 advised investigators that she is a friend of Kersey and that Kersey and the female victim, Witness 1, have a child together. On June 11, 2023, Witness 2 was with Kersey to drop off the child and noted that Kersey and Witness 1 had been arguing. Kersey went inside the residence while Witness 2 stayed outside but knocked on the residence door after several minutes had passed.

Kersey exited the residence and an argument related to the child erupted between him, Witness 1, and Witness 2. Witness 1 called the police. As the police vehicle approached, Witness 2 walked down the street to get the attention of the officer. She heard the sound of a gun “cock back,” and looked to see that Kersey had a handgun in his right hand. Kersey approached the police vehicle and yelled something to extent of “Get the f*** out of here,” and “I am at my crib,” or “this is my home.” After seeing the handgun, Witness 2 began walking away and the police vehicle drove past. Kersey then began to yell at Witness 1 and the child who had gotten into a nearby car. Witness 2 heard a female officer yell, “Get the f*** on the ground.” The stress of the situation caused Witness 2 to begin to vomit and she moved away from the scene. She heard shooting but did not observe the shots being fired.

Physical Evidence

Injuries

Tyrone Kersey sustained a single gunshot wound to his right shoulder. The bullet’s path of travel shattered his right humerus, lacerated his right brachial artery, punctured the right side of his thoracic cavity, lacerated his right lung, and lodged along his spine. Kersey underwent numerous surgeries at Bayhealth Medical Center in Dover, DE and Christiana Care Medical Center in Newark, DE. His right arm has been amputated just below the shoulder and he is paralyzed below his waist.



BAYHEALTH MEDICAL
CENTER
640 S. State Street
Dover DE 19901

Kersey, Tyrone
MRN: 300216617, DOB: 9/7/1985, Sex: M
Acct #: 102098947
Adm: 6/11/2023, D/C: 6/12/2023

Discharge Information (continued)

Discharge Date/Time	Discharge Disposition	Discharge Destination	Discharge Provider	Unit
				OPERATING ROOM

Final Diagnoses (ICD-10-CM)

Code	Description	POA	CC	HAC	Affects DRG
S21.341A [Principal]	Puncture wound with foreign body of right front wall of thorax with penetration into thoracic cavity, initial encounter	Yes	No		Yes
J94.2	Hemothorax	Yes	CC		Yes
S45.111A	Laceration of brachial artery, right side, initial encounter	Yes	CC		Yes
S42.351A	Displaced comminuted fracture of shaft of humerus, right arm, initial encounter for closed fracture	Yes	CC		No
S27.331A	Laceration of lung, unilateral, initial encounter	Yes	No		No
S41.141A	Puncture wound with foreign body of right upper arm, initial encounter	Yes	No		No
I95.9	Hypotension, unspecified	Yes	No		No

ED Diagnoses

Diagnosis	Description	
Final diagnoses		
Gunshot wound	Gunshot wound	--
Open displaced comminuted fracture of shaft of right humerus, Initial encounter	Open displaced comminuted fracture of shaft of right humerus, initial encounter	--
Hemopneumothorax on right	Hemopneumothorax on right	--
Hemorrhagic shock (CMS-HCC)	Hemorrhagic shock (CMS-HCC)	--

Body Worn Camera

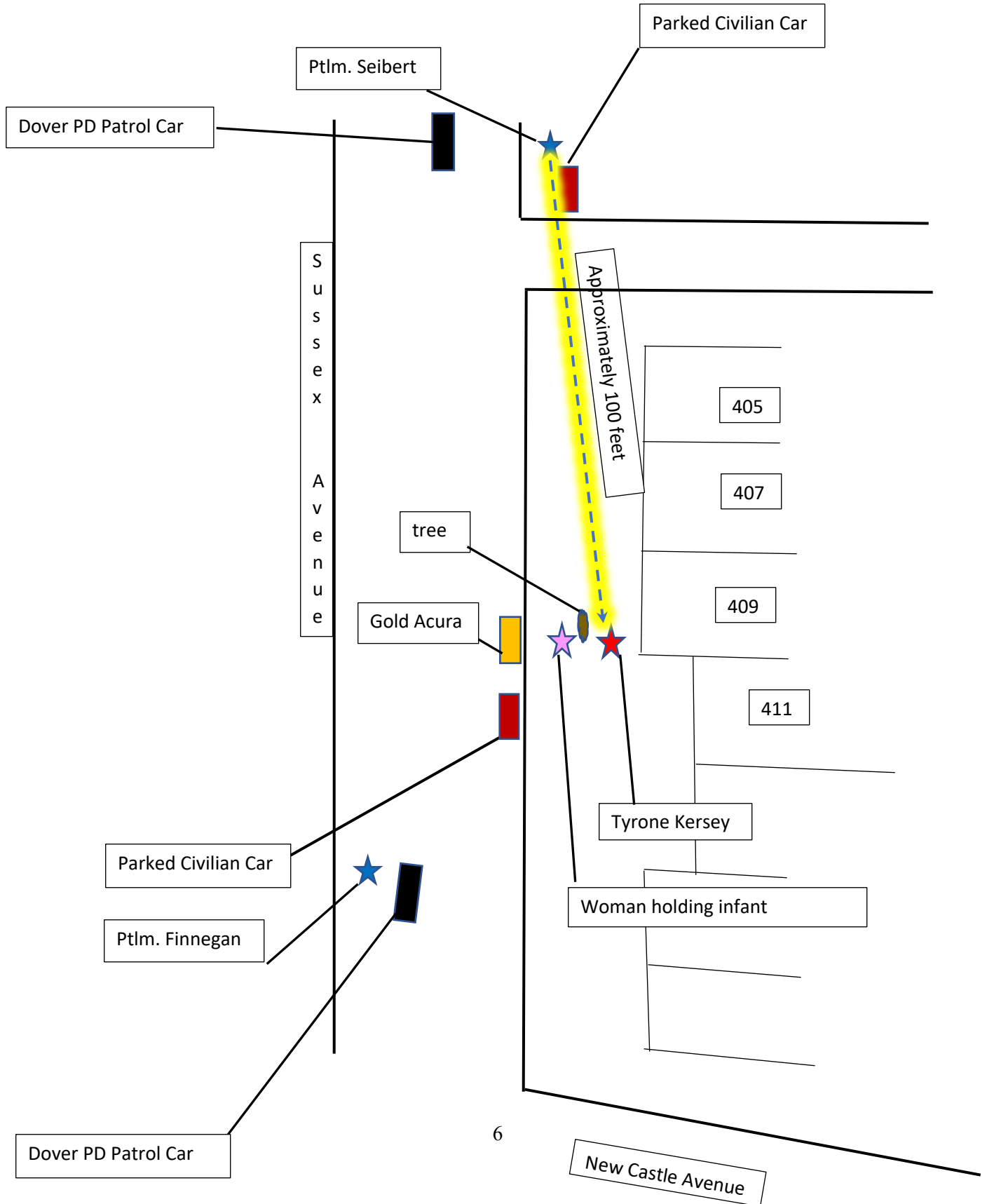
Included are pertinent sections of BWC footage from Ptlwm. Finnegan and Ptlm. Seibert depicting the events of June 11, 2023. Also included is MVR footage from Ptlwm. Finnegan's vehicle which shows Kersey approaching the vehicle aggressively.

Both officers' BWC footage depicts them yelling commands to Kersey to get on the ground and to drop the gun. On Ptlwm. Finnegan's footage she is also heard giving status updates via the radio, followed shortly by the sound of Kersey firing. Ptlm. Seibert's rifle can also be heard.

Ptlm. Seibert's BWC footage depicts him holding his rifle while communicating commands to Kersey and, later, firing his rifle.

Crime Scene Photos

DIAGRAM IS NOT SCALE – CREATED BY DOJ INV. GREER



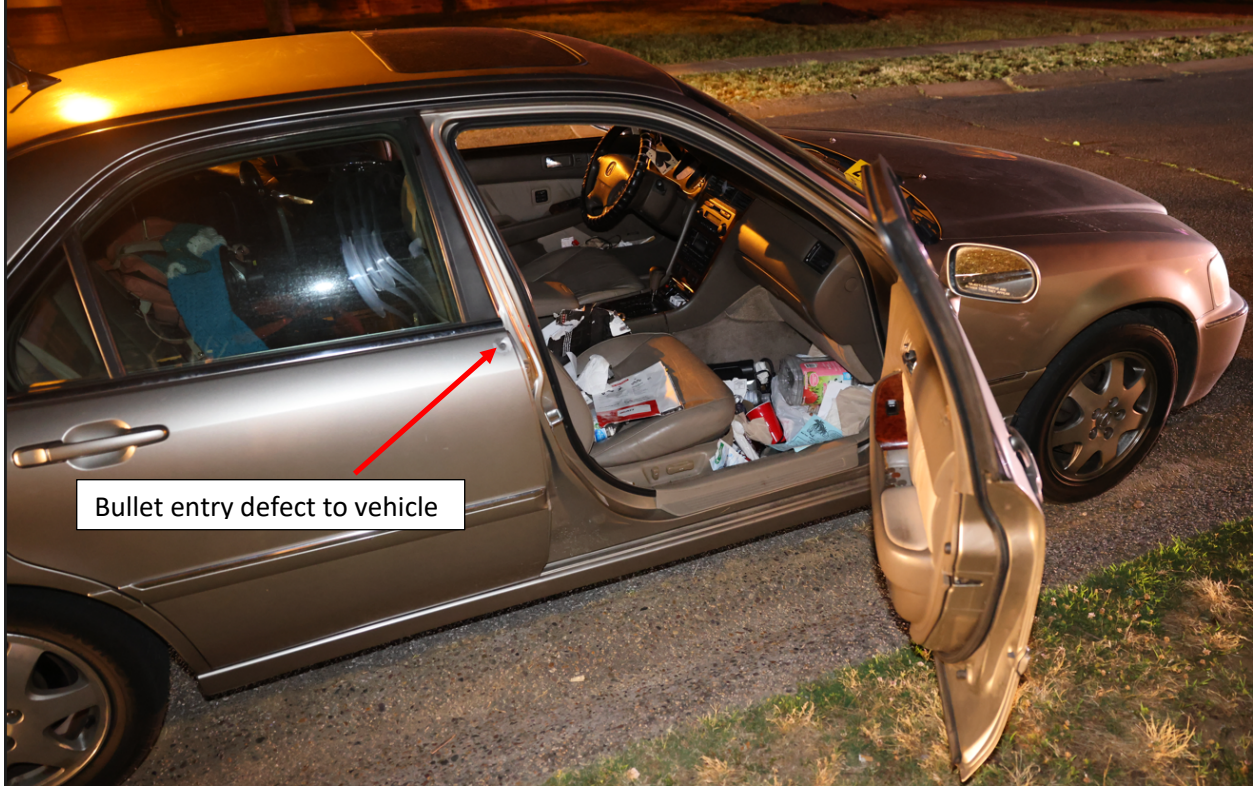


409 Sussex Avenue



Ptlm. Seibert -Approx. shoot location

Kersey – Approx. Collapse Location





Handgun Shell Casing





Rifle Shell Casing



Conclusion

The State must determine whether the use of deadly force by Ptlm. Seibert of the Dover PD constitutes 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 deadly force is justifiable under this section if the [officer] believes that such force is necessary to protect the [officer] against death or serious physical injury.” In a criminal case, the State must also prove beyond a reasonable doubt that an officer’s use of deadly force *was not* justified under Title 11 Section 465, use of force for the protection of other persons.¹

Under Delaware law, the objective facts and circumstances must be considered when determining whether the use of force was justifiable against another person, either in self-defense or in the defense of others. The specific factual inquiry is two-pronged. The first question is whether the officer 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 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.² 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).

In this case, the use of force by police was justified as a matter of law in both self-defense and in the defense of others. Ptlm. Seibert was not reckless or negligent in forming the belief that deadly force was immediately necessary. On June 11, 2023, Ptlm. Seibert responded to 409 Sussex Avenue due to a trespassing complaint which was ultimately determined to be a domestic dispute. Kersey, armed with a handgun, refused numerous commands made by police. Kersey fired into a vehicle occupied by his girlfriend and one-year old child. He then attempted to force the woman and child into the residence.

Because Ptlm. Seibert 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). The police were confronting an active shooter. Kersey fired into an occupied vehicle and made further contact with the victims, attempting to use them as a shield. In response, Ptlm. Seibert used his rifle and only fired once. As a result, no third persons were injured by the police and the police took reasonable measures to only use force when necessary.

Finally, 29 Del C. § 2553(a)(3)(b) 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

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 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.”

² 11 Del. C. § 470(a).

motivating factor. Kersey is a black male. Ptlm. Seibert is a white male. Race was not a relevant or motivating factor in the use of force.³ The relevant and motivating factors in the use of force by Ptlm. Seibert was the reasonable belief that force was necessary due to the imminent danger and substantial risk of death/serious injury that Kersey posed to officers and others.

Upon careful consideration of the available evidence and the application of expert opinion to that evidence, Ptlm. Seibert reasonably believed that the use of deadly force upon Kersey was immediately necessary for the purpose of protecting another – and himself. As a result, 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.

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