

FINAL REPORT OF THE DEPARTMENT OF JUSTICE
USE OF DEADLY FORCE BY NEW CASTLE COUNTY POLICE DEPARTMENT
EDELMANNS: ANDREW EDELMANN AND AIDA PABON
OFFICER: CORPORAL COREY NICHOLSON
DATE OF INCIDENT: MARCH 6, 2023

Dated: March 20, 2024

I. 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 the New Castle County Police Department (“NCCPD”) against Andrew Edelmann (“Edelmann”) and Aida Pabon (“Pabon”). Independent of any administrative or criminal investigation conducted by the NCCPD, investigators and DCRPT attorneys reviewed evidence consisting of video footage, dispatch records, victim and witness interviews, police interviews, scene photos, and medical records before reaching a conclusion.

The death of Edelmann and the injury to Pabon were caused using deadly force by a New Castle County Police Officer. The sole purpose of this report is to determine if the officer’s use of deadly force rises to the level of criminal in nature.

II. 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 for which there is a reasonable probability that a conviction can be obtained.¹ 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.

III. Facts

On Monday, March 6, 2023, at approximately 7:40 p.m., members of the New Castle County Police Department (NCCPD) engaged in an officer involved shooting at a 7-Eleven convenience store located at 298 South Maryland Avenue in Wilmington. Corporal Corey Nicholson discharged his departmentally issued firearm, killing Edelmann and injuring Ms. Pabon, who was treated at Christina Hospital for a non-life-threatening injury.

This incident stemmed from an investigation by NCCPD’s Mobile Enforcement Team (“MET team”) involving the sale of an illegal controlled substance. During the investigation, officers set up an undercover purchase of illegal drugs from an individual later identified as Edelmann. Officer Corey Will, while acting in an undercover or covert capacity, established communication with Edelmann via Instagram. During Officer Will’s communication with Edelmann, they reached an agreement in which Edelmann would sell Officer Will two chocolate bars infused with psychedelic mushrooms for \$50.00 each. Psychedelic mushrooms, or Psilocybin, are an illegal Schedule I Controlled Substance pursuant to Title 16 of the Delaware Code. Edelmann and Officer Will agreed to meet at the South Maryland Avenue 7-Eleven on

¹ Delaware Department of Justice Criminal Division Policy Manual *citing* NDAA National Prosecution Standards (2nd ed. 1991) §§ 43.3.

March 6, 2023, to conduct the sale. Along with Officer Will, several members of the NCCPD MET Team were involved in this investigation and incident. This included, among others, Officers Nicholson, Jeremy Canaan, Drew Hunt, Anthony Pala, Patrick Karpin, and Kevon Cumberbatch. Officers discussed an operational plan involving the planned purchase of drugs from Edelman prior to leaving the New Castle County Police Department. It was determined that the operation called for Officer Hunt to use the undercover Ford pickup truck to conduct a maneuver referred to as a “pinch” maneuver. This maneuver required Officer Hunt to position his vehicle in such a way that it blocked the path of Edelman’s vehicle, preventing him from fleeing the scene and thus allowing officers to arrest him. The operational plan and related discussion involved the Officers’ direct supervisor, Senior Sergeant Kevon Cumberbatch. Senior Sergeant Cumberbatch approved of the operation and would be present throughout. The Officers were interviewed about the incident after it occurred. Those interviews were recorded and reviewed as part of this investigation. Additionally, many officers were equipped with body worn cameras, capturing each officer’s vantage point during the incident. The body worn camera footage was reviewed by investigators and attorneys with DCRPT. Along with the body worn cameras, the incident was captured by surveillance cameras at the 7-Eleven and a nearby business. These videos were also reviewed to assist in making this determination.

On the evening of March 6, members of the NCCPD MET team responded to the 7-Eleven on South Maryland Avenue and the surrounding area. The MET team established surveillance of the 7-Eleven parking lot and waited for Officer Will to confirm Edelman’s arrival. Officers were driving or riding in either undercover or marked police vehicles. Officer Hunt was driving an undercover Ford pickup truck with Corporal Nicholson in the front passenger seat and Officer Will in the back seat. The officers in the undercover pickup truck were surveying the area from the parking lot of a nearby Burger King. Officer Pala was driving an undercover silver Chevrolet Cruz and was initially parked at the nearby Five Points Fire Station conducting surveillance. Officer Canaan was driving an unmarked police Tahoe with Officer Karpin riding in the front passenger seat. Officer Canaan parked his vehicle near the apartments located behind the 7-Eleven off East Reamer Avenue. Members of the MET team only had a picture of Edelman and had no further details other than that he may potentially be driving a pickup truck.

At approximately 7:26 p.m., Officer Will received a message from Edelman stating he was parked at the 7-Eleven parking lot and was in a Hyundai SUV. Officer Pala was the first to respond to the parking lot of the 7-Eleven. He observed Edelman in the driver’s seat of the Hyundai and a person in the front passenger seat, later identified as Aida Pabon. The Hyundai SUV was backed into a handicap spot in the 7-Eleven parking lot. (*See Figure 1.*)



Figure 1. Still shot captured from surveillance footage of a business located across the street from the 7-Eleven. Depicted in the photograph is the parking lot of the South Maryland Avenue 7-11 with Officer Pala's undercover vehicle (circled in red) and the Hyundai SUV driven by Edelmann (circled in yellow).

Once it was confirmed that Edelmann had arrived, the undercover Ford pickup pulled into the parking lot of the 7-Eleven. These officers were immediately followed by Officers Canaan and Karpin, who were approaching from the rear of the business in a marked police Tahoe. After entering the parking lot, Officer Hunt attempted to conduct the “pinch” maneuver as was planned prior to the incident. At that time the police Tahoe was still approaching from the rear of the 7-Eleven. Officer Hunt’s single vehicle was unable to entirely block or “pinch” Edelmann’s vehicle, leaving a gap of several feet. (See Figures 2 and 3.)



Figure 2. Still shot captured from surveillance footage of a business located across the street from the South Maryland Avenue 7-Eleven. Depicted in the photograph is the undercover Ford pickup truck (circled in blue) as it enters the parking lot of the 7-Eleven. Depicted in the photograph is the undercover Ford pickup truck (circled in blue) as it enters the parking lot of the 7-Eleven. Edelmann's Hyundai SUV (circled in yellow) can be seen parked in a handicap spot in front of the 7-Eleven.



Figure 3. Still shot captured from surveillance footage of a business located across the street from the South Maryland Avenue 7-Eleven. Depicted in the footage is the undercover Ford pickup truck (circled in blue) as it attempts to conduct the “pinch” maneuver to block the path of escape for Edelman’s Hyundai SUV (circled in yellow).

Corporal Nicholson, who was in police uniform, exited the front passenger seat of the Ford pickup truck and immediately began shouting commands at Edelman. At that time Corporal Nicholson was standing in the direct path of Edelman’s vehicle, which was left open by the unsuccessful “pinch” maneuver. Corporal Nicholson drew his firearm and gave additional commands to Edelman with the intent to place him under arrest. Edelman accelerated his vehicle in an apparent attempt to flee the scene. Corporal Nicholson was barely able to get out of the way of Edelman’s accelerating vehicle. After nearly being struck by the vehicle, Corporal Nicholson discharged his firearm toward the driver’s seat of Edelman’s vehicle. Edelman’s vehicle continued to accelerate, striking the undercover Ford pickup truck and then the side of Officer Canaan’s Tahoe, which had entered the parking lot from the rear of the 7-Eleven. (See Figures 4, 5, and 6.)



Figure 4

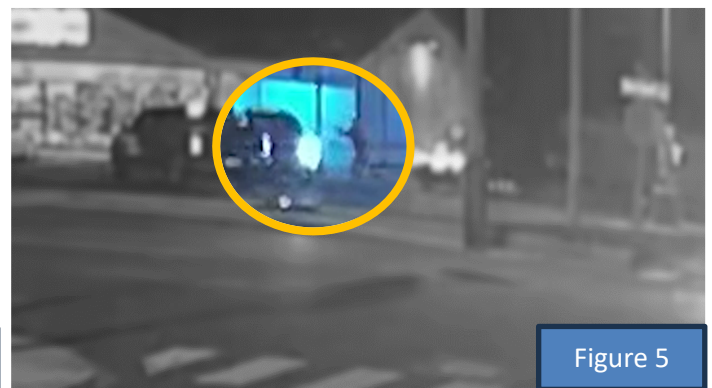


Figure 5

Figures 4 and 5. Corporal Nicholson and the head lights of Edelman’s Hyundai SUV can be seen in the highlighted areas.



Figure 6. Edelmann's Hyundai SUV (left), Corporal Nicholson (middle), and the Tahoe driven by Officer Canaan (right) are in the highlighted areas.

Edelmann was struck by several rounds from Corporal Nicholson's service weapon. Ms. Pabon, who was seated in the front passenger seat, was struck in the left knee. Edelmann and Pabon were immediately removed from their vehicle and given medical aid by the officers on scene. After both subjects were removed from the vehicle, Officer Pala leaned into the driver's side of vehicle to confirm it was in park. At that time Officer Pala observed a rifle on the driver's side floor of the Hyundai SUV. Emergency medical assistance arrived quickly thereafter and began providing lifesaving measures. Edelmann was pronounced deceased at the scene. Pabon was transported to Christiana Hospital and underwent surgery for a gunshot wound to her leg. Corporal Nicholson, who fired eight total rounds, was the only officer to discharge his firearm.

The weapon recovered from the driver's side floor of Edelmann's vehicle was a Smith and Wesson MP-15, an AR style semi-automatic rifle. The weapon was equipped with a magazine containing 28 rounds of ammunition with a single round loaded in the weapon's chamber. DNA samples obtained from the weapon were sent to the Delaware Division of Forensic Science for testing. Test results revealed that several DNA samples recovered from the weapon matched Edelmann's DNA profile.

IV. Officer Involved Statements

A. Corporal Corey Nicholson

Corporal Corey Nicholson has been employed by the New Castle County Police for ten years. Nicholson is currently assigned to the Mobile Enforcement Team (MET). Corporal Nicholson was interviewed after the incident occurred and provided a statement.

Corporal Nicholson explained that he was engaged in an unrelated MET Team investigation prior to the planned drug transaction involving Edelmann. While other members of the MET Team had reported back to police headquarters, Corporal Nicholson was delayed at the scene of the unrelated investigation waiting for the arrival of a tow truck. When Corporal Nicholson arrived back at police headquarters the other members of the MET Team were getting into their vehicles to go to the 7-Eleven to meet Edelmann. It was then that Corporal Nicholson got into the undercover Ford pickup truck being driven by Officer Hunt. He was seated in the front passenger seat, with Officer Will in the back seat. As the truck pulled into the parking lot of 7-Eleven it drove past the parked Hyundai SUV. At this time Corporal Nicholson was further able to visually confirm that Edelmann was the driver. Officer Hunt reversed the truck, attempting to

position it for a “pinch” maneuver.² Corporal Nicholson knew that the truck was unable to entirely “pinch” off the Hyundai. Corporal Nicholson stated that he was previously trained to conduct a “felony stop” in response to an unsuccessful pinch maneuver. As such, he exited the front passenger seat of the truck with his weapon drawn to conduct a “felony stop” on the vehicle/Edelmann. Upon exiting, he immediately started giving commands to Edelmann. Corporal Nicholson did not recall exactly what he said to Edelmann, but remembered making eye contact with Edelmann, who looked startled and upset. He then noticed Edelmann put the vehicle in drive. Edelmann quickly accelerated directly towards Corporal Nicholson, who continued to maintain eye contact with Edelmann as he shouted commands. Corporal Nicholson felt that the vehicle was “very close” to him and was accelerating directly at him. Corporal Nicholson stated that Edelmann’s facial expression gave him the impression that Edelmann was “not going to give up – deer in headlights face.” Corporal Nicholson believed that the vehicle was going to hit him. Corporal Nicholson moved sideways, barely avoiding being struck by the car, and fired his weapon at Edelmann. When he discharged his firearm, he could see that the police Tahoe that had approached from the rear was now in the parking lot of the 7-Eleven. At that point in time Corporal Nicholson believed that his own life was in jeopardy, as well as the lives of his fellow Officers. He was concerned that Officers from either the pickup truck or Tahoe had gotten out of their respective vehicles, and that Edelmann’s vehicle may hit one of them. He explained the situation as “do or die.”

B. Officer First Class Jeremy Canaan

Officer Canaan is currently assigned to the NCCPD’s MET. Officer Canaan was interviewed after the incident occurred and provided a statement. Officer Canaan stated that he was driving a semi-marked police Tahoe with Officer Karpin in the front passenger seat. He stated that he was parked in the apartments in the rear of the 7-Eleven store off East Reamer Avenue before the incident occurred. Officer Canaan saw the Ford pickup truck with Officers Hunt, Nicholson and Will pull into the parking lot of the 7-Eleven. Next, he heard someone say over the radio “it’s him” and to initiate (i.e., engage the target). Officer Canaan started driving toward the front parking lot of the 7-Eleven with his emergency lights activated and could see the Ford pickup truck pull in front of Edelmann’s vehicle as they approached from the rear. Officer Canaan saw Edelmann’s vehicle start to “take off”. He didn’t recall seeing Corporal Nicholson getting out of the truck, but he then saw Corporal Nicholson “backpedaling” and trying to get out of the way of Edelmann’s vehicle. Officer Canaan could hear Corporal Nicholson giving commands and believes that Corporal Nicholson was telling the driver to stop. It appeared to Officer Canaan that Edelmann was intentionally trying to hit Corporal Nicholson by cutting the vehicle’s steering wheel and accelerating directly toward Nicholson. Officer Canaan observed Corporal Nicholson discharge his firearm but did not know how many times.

C. Officer First Class Patrick Karpin

Officer Karpin is currently assigned to the NCCPD’s MET. Officer Karpin was interviewed after the incident occurred and provided a statement.

² Special Operations trains twice a year on static vehicle pinches. Corporal Nicholson is normally the driver during these operations and often uses the 7-Eleven on Maryland Avenue to conduct operations such as the present one. It was common practice for the MET Team to use an unmarked undercover vehicle to make an approach and pinch a subject vehicle to prevent the subject from fleeing the scene.

Officer's Karpin and Canaan were in an unmarked police Tahoe parked in the apartment parking lot behind the 7-Eleven before the incident occurred. Someone called out over the radio that Edelmann was parked in a gray SUV backed into the handicap spot at the 7-Eleven. As they entered the 7-Eleven parking lot from the rear, Officer Karpin could hear Corporal Nicholson giving verbal commands to Edelmann and believed he heard Nicholson saying "Police, stop the car, stop the car." Officer Karpin could hear the engine of Edelmann's vehicle revving and observed the vehicle heading straight towards Nicholson. Corporal Nicholson's back was to the pickup truck and Officer Karpin believed that Nicholson was going to get hit by Edelmann's car. Edelmann's vehicle crashed into the Tahoe and stopped moving. Officer Karpin could hear that the engine was still "revving" as it was pinned against the Tahoe.

D. Officer First Class Andrew Hunt

Officer Hunt is currently assigned to the NCCPD's MET. Officer Hunt was interviewed after the incident occurred and provided the following statement.

During the incident on March 6, Officer Hunt was driving an unmarked Ford pickup truck with Corporal Nicholson in the front passenger seat and Officer Will in the back seat. After it was confirmed that Edelmann was in the driver's seat of the Hyundai SUV parked in the 7-Eleven parking lot, Officer Will gave the command to engage with the subject. They started driving to the 7-Eleven parking lot from their initial location where they were conducting surveillance. After pulling into the parking lot Officer Hunt drove past Edelmann's vehicle and had to back up to conduct a three-point turn. Officer Hunt indicated that he was unable to pull directly in front of the vehicle and successfully conduct a "pinch" of Edelmann's vehicle. When Officer Hunt stopped his truck, he was not completely blocking the path of Edelmann's vehicle. Officers Will and Nicholson exited the truck, and Officer Hunt could hear Corporal Nicholson giving verbal commands to Edelmann. Officer Hunt then heard the engine of Edelmann's vehicle accelerate and saw it increasing speed as it headed towards Corporal Nicholson. Officer Hunt saw Corporal Nicholson "diving" out of the way of the vehicle, which caused him to exit his vehicle. As Officer Hunt exited his vehicle, he heard gunshots in quick succession. He then moved around the pickup truck to the passenger's side and observed Edelmann's vehicle doing a "slow roll."

E. Officer First Class Corey Will

Officer Will is currently assigned to the NCCPD's MET. Officer Will was interviewed after the incident occurred and provided a statement. Officer Will explained how he had set up an undercover drug transaction to purchase an illegal controlled substance from Edelmann. The drug transaction was scheduled to occur on March 6, 2023. On the evening of the drug transaction Officer Will arrived at the location in an unmarked Ford pickup truck being driven by Officer Hunt. Officer Will was in the back seat and Corporal Nicholson was in the front passenger seat of the truck. After it was confirmed that Edelmann was in the Hyundai SUV, Officers received a call to "initiate" the vehicle and conduct the "pinch/stop." Officer Will did not believe that the "pinch" of Nicholson's vehicle was fully executed before Corporal Nicholson exited the front passenger seat of the Ford pickup truck. Officer Will heard Corporal Nicholson yelling commands at Edelmann after Corporal Nicholson got out of the front seat of the pickup truck. Officer Will then exited the back driver's side of the pickup truck. Officer Will then heard Edelmann's vehicle accelerating followed by multiple gunshots. When Officer Will came around the back of the pickup truck to the passenger's side, he saw that Edelmann's vehicle had crashed into Officers Canaan's Tahoe.

V. Injuries:

On March 7, 2023, the Delaware Division of Forensic Science performed an autopsy on Edelmann, The performing doctor determined the cause of death to be multiple gunshot wounds. The autopsy revealed five gunshot wounds, including to Edelmann’s head, arm and torso. Ms. Pabon was treated for a gunshot wound to the leg and subsequently discharged from the hospital.

VI. Physical Evidence

Surveillance footage from the South Maryland Avenue 7-Eleven (as seen in Figures 9 and 10) and a nearby business (as seen in Figures 1 -6) was obtained during the investigation. Additionally, several of the officers involved in the incident were equipped with body worn cameras (“BWC”). This included Corporal Nicholson. The surveillance footage and the pertinent BWC footage show Corporal Nicholson exit the unmarked Ford pickup truck and draw his handgun while simultaneously yelling commands for Edelmann to stop. The BWC and surveillance footage show that Corporal Nicholson was directly in front of Edelman’s vehicle when Edelmann made an apparent attempt to flee, nearly running over Corporal Nicholson in the process. Corporal Nicholson was barely able to avoid getting hit as he fired his weapon at the vehicle. The vehicle then crashed into the semi-marked Tahoe being driven by Officer Canaan. The engine of Edelmann’s vehicle can be seen and heard still accelerating as it is pinned against the side of the police Tahoe. Relevant portions of the surveillance footage are available with this report.

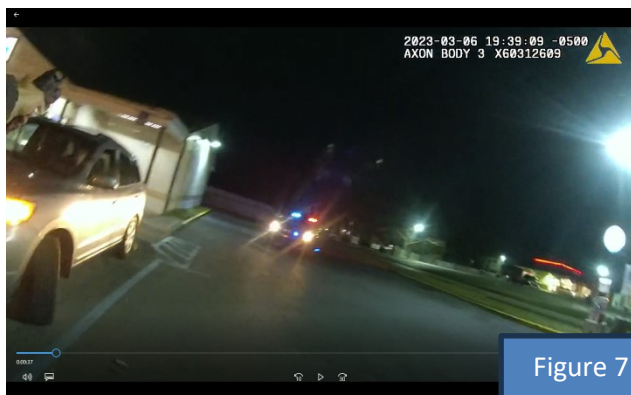


Figure 7

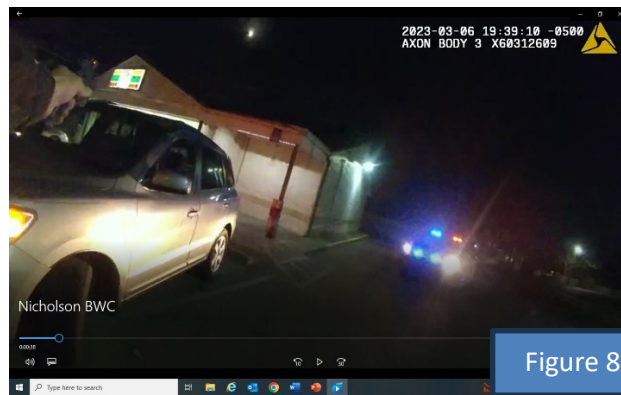


Figure 8

Figures 7 and 8. Screenshots from Corporal Nicholson's body worn camera depicting Edelmann's Hyundai SUV traveling directly toward the officer.

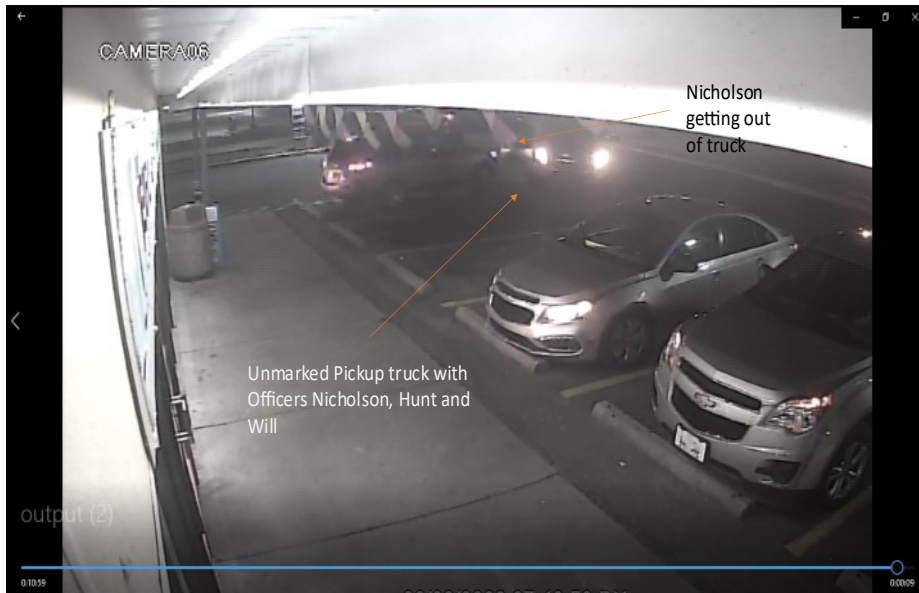


Figure 9. Still shot from 7-Eleven surveillance footage.

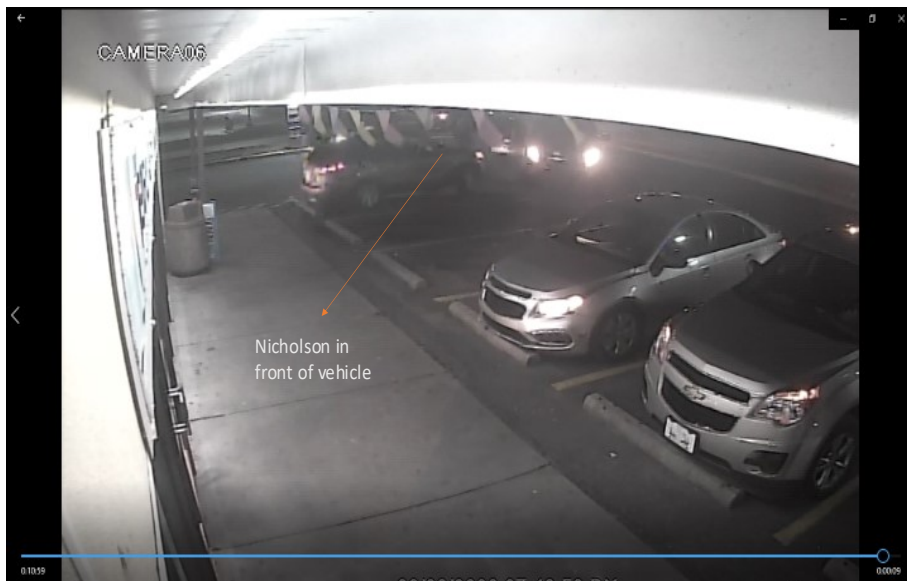


Figure 10. Still shot from 7-Eleven surveillance footage.

VII. Conclusion

DCRPT conducts reviews such as this with a specific purpose. The State must determine whether the use of deadly force by Corporal Nicholson of the NCCPD constitutes a criminal act that is reasonably likely to result in a conviction.³ When determining the reasonable likelihood of a conviction, the State must consider the viability of any potential defenses. As such the State looks to the relevant criminal statutes defining self-defense. This includes Title 11 Section 464 of the Delaware Code, which defines the legal use of force in self-protection. It provides, in pertinent part, that “[t]he use of deadly force is justifiable under

³ Delaware Department of Justice Criminal Division Policy Manual *citing* NDAA National Prosecution Standards (2nd ed. 1991) §§ 43.3.

this section if the [officer] reasonably believes that such force is necessary to protect the [officer] against death, or serious physical injury....” In the context of criminal cases, the State is always mindful that it must prove that the accused committed the crime beyond a reasonable doubt, a demanding standard. Furthermore, in the context of reviewing a police officer’s use of force, the State is cognizant that it must prove beyond a reasonable doubt that an officer’s use of deadly force was not justified under Title 11 Section 464, Title 11 Section 465 “Use of force for the protection of other persons,” or Title 11 Section 467 “Use of force in law enforcement.”⁴

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. One must also consider the subjective beliefs of the person using force at the moment the force was used, and whether those beliefs were reasonable under the circumstances.⁵ The “reasonable person” standard of Delaware’s self-defense statutes applies to the person’s belief that a threat exists, and the estimated amount of force that the person believes is necessary to protect oneself from such threat.⁶ 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.⁷ If such force is determined to have been justified, the law requires an examination into a third question - 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 Corporal Nicholson as to Edelman was not a criminal act because it was in both self-defense and the defense of others. Corporal Nicholson was part of a covert or undercover operation to purchase illegal drugs from Edelman and conduct a subsequent arrest. Before entering the parking lot of the 7-Eleven, the MET decided that Officer Hunt would position and park the pickup truck in

⁴ “(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.”; *Newman v. State* 942 A.2d 588 (Del. 2008)(citing *Hamilton v. State*, 343 A.2d 594 (Del. 1975) self-defense and defense of others are simple defenses rather than affirmative defenses, placing the ultimate burden of persuasion beyond a reasonable doubt as to the issue of justification upon the State.); *Tice v. State*, 382 A.2d 231 (Del. 1977)(Title 11 Section 464 requires the State to negate any reasonable doubt on the issue of justification); *State v. Harrison*, 2016 WL 5871628 (Del Super.) (“[T]he State bears the burden of disproving justification beyond a reasonable doubt as opposed to the Defendant proving justification by a preponderance of the evidence.”); See Pattern Criminal Jury Instructions of the Superior Court of the State of Delaware 5.11 Justification – Use of force in self-protection “You must consider evidence of this defense along with all the other evidence in determining whether the State has satisfied its burden of proving the defendant’s guilty beyond a reasonable doubt.”

⁵ *Zuppo v. Carroll*, United State District Court, 458 F. Supp. 2d 216 (Del. 2006); *Coleman v. State*, 320 A.2d 740 (Del. 1974); *Gutierrez v. State*, 842 A.2d 650 (Del. 2004); *State v. Peters*, 283 A.2d 668 FN 173 (Del Super. 2022);

⁶ 11 Del. C. § 464(b) “a person employing protective force may estimate the necessity thereof under the circumstances as the person reasonably believes them to be when the force is used[.]” See Pattern Criminal Jury Instructions of the Superior Court of the State of Delaware 5.11 Justification – Use of force in self-protection “A person using protective force may estimate the necessity of such force, under the circumstances that the person believes to exist,”

⁷ 11 Del. C. § 470(a).

such a way that it blocked the path of travel for Edelmann's vehicle – a common maneuver referred to by police as a “pinch” maneuver. The purpose of this maneuver was to prevent the suspect from fleeing the scene in his vehicle. Officer Hunt was unable to successfully complete the “pinch” maneuver and failed to block all paths of escape for Edelmann. Corporal Nicholson exited the front passenger seat of the unmarked Ford pickup truck to arrest Edelmann. In accordance with his police training, Corporal Nicholson drew his weapon and prepared to conduct a “felony arrest” of Edelmann after the “pinch” maneuver was unsuccessful. Although Corporal Nicholson was in an unmarked police vehicle, he was dressed in a clearly marked police uniform. Additionally, immediately upon his exit, Corporal Nicholson began shouting “police” and other commands for Edelmann to stop.

When he got out of the vehicle, Corporal Nicholson was standing in the direct path of Edelmann's vehicle. Corporal Nicholson made eye contact with Edelmann and observed the startled look on Edelmann's face. He watched as Edelmann shifted the Hyundai SUV into drive. Edelmann's vehicle accelerated forward nearly striking Corporal Nicholson, who had to quickly move out of the way to avoid being hit. Fearing that Edelmann would run him over to make his escape, or possibly run over one of his fellow officers, Nicholson fired at Edelmann eight times. After nearly hitting Corporal Nicholson, Edelmann's vehicle crashed into the police Tahoe being driven by Officer Canaan. Edelmann's vehicle ultimately came to a stop when it became pinned against Officer Canaan's vehicle.

The reasonableness of Corporal Nicholson's belief that deadly force was immediate and necessary is supported by the fact that Edelmann's vehicle struck two police vehicles in an apparent attempt to flee. At the moment he fired his weapon, Corporal Nicholson reasonably believed that he faced the threat of death or serious physical injury. Additionally, it was reasonable for Corporal Nicholson to believe that his fellow officers, specifically Officer Canaan, may be seriously injured or killed by Edelmann's vehicle. Considering the circumstances as they existed on that date and time, Corporal Nicholson's use of deadly force was a justified and reasonable response to the real threat of death or serious physical injury posed to him and his fellow officers by the actions of Edelmann. In large part, the State bases its decision on the objective facts and circumstances as they existed at the time of the incident, and the real danger of death or serious physical injury that was present under the circumstances. Even though it would be legally appropriate, there is no particular need to analyze the reasonableness of Corporal Nicholson's subjective beliefs. Any subjective perceptions of harm became objective facts when Edelmann nearly ran over Corporal Nicholson with a Hyundai SUV and struck two police vehicles in a matter of seconds. Once it is determined that the officer reasonably believed that the use of deadly force was necessary, the question becomes whether the officer was reckless or negligent in having such belief. In light of the fact that the belief of injury came close to becoming reality, Corporal Nicholson was not reckless or negligent in having such belief.

Because Corporal Nicholson was justified to use force against Edelmann pursuant to 11 Del. C. § 464, the inquiry turns to whether Corporal Nicholson was negligent or reckless in injuring or creating a risk of injury to Pabon under 11 Del. C. § 470(b). Under Delaware law, a person acts with negligence when the person “fails to exercise the standard of care which a reasonable person would observe in the situation.”⁸ A person acts recklessly when “the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.”⁹

⁸ 11 Del. C. § 231(d).

⁹ Id.

As discussed above, Corporal Nicholson fired eight rounds from his service weapon at Edlmann, the driver of the vehicle, and one round struck Pabon, the passenger in the car. Pabon was seated in the front passenger side of the vehicle during a planned drug transaction. Given that the State has concluded that the use of force towards the driver of the vehicle was justified, we cannot here find that the injury to Pabon was caused by negligence or recklessness to a degree that would amount to a gross deviation from the reasonable actor standard. The statute defining recklessness requires that the person must be aware of and consciously disregard a substantial and unjustifiable risk.¹⁰ As explained above, Corporal Nicholson was not afforded the time and opportunity to recognize, and then consciously consider and disregard, all potential risks. Although Pabon was not directly responsible for the danger that Cpl. Nicholson faced, there are insufficient facts to show that Corporal Nicholson was aware of, and further consciously disregarded, an unjustifiable risk to Pabon. The State has already determined that the risk was objectively present. For reasons nearly identical to the prior analysis, we do not find that Corporal Nicholson was negligent by failing to exercise a reasonable standard of care. Pabon's injury was the unintentional result of Corporal Nicholson's reasonable response to a justifiable risk. For these reasons, Corporal Nicholson's use of force was not negligent or reckless under 11 Del. C. § 470(b).

Finally, 29 Del C. § 2553(a)(3) requires as a matter of law that DCRPT issue a public report on the use of force, and 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. Corporal Nicholson and Edlmann are both white males. No evidence exists to show that race was a motivating or relevant factor in the use of force.¹¹ Edlmann had communicated directly to Officer Will that he would supply him with illegal drugs. There is no evidence to suggest that Edlmann was targeted because of his race. The resulting use of force, after a failed pinch maneuver, was directly related to Corporal Nicholson's belief that he or his colleagues were in imminent danger. The relevant and motivating factors in the use of force by Corporal Nicholson was the reasonable belief that force was necessary due to the imminent danger and substantial risk of death/serious injury that Edlmann created when he attempted to flee the scene nearly running over Corporal Nicholson and plowing into the vehicle driven by Officer Canaan.

Upon careful consideration of the available evidence and the application of expert opinion to that evidence, Corporal Nicholson reasonably believed that the use of deadly force was immediately necessary for the purpose of protecting another – and himself. As a result, DCRPT concludes the use of deadly force in this case does not constitute a criminal offense under the laws of the State of Delaware.

¹⁰ Id.

¹¹ 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).