

OIC Shooting – J. Wiseman (12/2/2022)

SCOPE AND PURPOSE 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 multiple law enforcement agencies against Jonathan W. Wiseman (“Wiseman”). Per Title 29 § 2553 of the Delaware Code, DCRPT shall “[i]nvestigate the use of deadly force incidents by law enforcement . . . for the purpose of determining whether such use of force was justified as a matter of law.” Independent of any administrative or criminal investigation conducted by any law enforcement agencies, DCRPT investigators and attorneys reviewed evidence consisting of video footage, dispatch records, victim and witness interviews, police interviews, scene photos, and medical records.

DCRPT determines whether a law enforcement officer’s use of deadly force constitutes a criminal act. The purpose of this investigation is not to 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 the involved officers’ actions complied with departmental policies or procedures.

FACTS

Introduction

This analysis follows an extensive investigation into a December 2, 2022, officer-involved shooting involving eighteen (18) different officers from multiple law enforcement agencies across New Castle County, resulting in the fatal shooting of subject Wiseman.¹ At all times relevant to this report, Wiseman was known to be in possession of a firearm. Wiseman pointed his firearm at law enforcement and civilians alike, used the threat of deadly force to take motor vehicles in furtherance of his flight from police, and on multiple occasions fired his handgun. During the chase, Wiseman drove recklessly, colliding with multiple vehicles and crashing through construction barriers. He also fired his handgun at a driver; the bullet pierced the windshield and lodged in the dashboard just in front of the driver. Wiseman refused to surrender his firearm and refused to comply with police officers’ demands to stop. Wiseman initially fled on foot after a Delaware State Trooper approached him near the Town of Newport. Wiseman would subsequently stop and carjack multiple motorists, while leading officers on a high-speed pursuit for over 20 miles, with the chase ultimately ending near the I-95 and Route 896 interchange.

¹ Given the number of officers involved and the widespread nature of the incident, evidentiary analysis, and testing – for example the forensic firearm/ballistic examination – took a significant amount of time to complete, thus impacting DCRPT’s ability to release its public findings.

Given the length of time and area covered during this incident, the facts and legal analysis are best addressed by way of the general location in which they occurred. (See Figure 1).



Figure 1: → Wiseman’s general path of travel.
📍 Location where pursuit started.
📍 Location where pursuit ended.

Newport

E. Ayer Street

Wiseman, along with two other persons, arrived at an automotive repair shop at 118 East Ayer Street in Newport around 6:30 am on December 2, 2022. Wiseman was the driver of a white Acura sedan.² Wiseman requested assistance in jump-starting the battery of the vehicle from the repair shop and was acting suspiciously. At one point, a gun fell out of the driver’s door of the Acura, landing on the ground before Wiseman placed it back in the vehicle.³ Wiseman and his passengers remained parked in front of

² The vehicle is owned by a woman with whom Wiseman had an intermittent relationship spanning seven years.

³ The gun, which was ultimately recovered by law enforcement officers, was a Ruger LCP II 380 caliber handgun. The handgun was reported stolen on December 5, 2022—three days after this incident occurred.

the repair shop, while an employee watched them from the interior of the shop via surveillance camera. Ten minutes later, the employee observed that the vehicle was still parked out front and called 911. The employee was then contacted by Corporal Robert Harris (“Harris”), who was en route to the repair shop. The employee relayed to Trooper Harris that Wiseman “ran up on” his son when he was opening the shop, that a gun had fallen out of the car while he and his son helped to jump start Wiseman’s vehicle, and that he didn’t know where the gun was now.

Trooper Harris parked on the street, facing the white Acura sedan. Wiseman was standing in front of the Acura, with the hood open and jumper cables connected to the battery. Trooper Harris made contact with Wiseman, and Wiseman turned his back on Harris and walked towards the rear of the Acura. Harris shouted, “put your fuckin’ hands up now” and Wiseman took flight.

E. Market Street

Trooper Harris pursued Wiseman on foot through the town of Newport. Corporal Robert Batschelet (“Trooper Batschelet”) and Corporal Dempsey Walters (“Trooper Walters”) arrived and joined the pursuit. The officers gave Wiseman multiple commands to drop his weapon, to which Wiseman responded, “I’m going to kill myself.” (See Figure 2) During this pursuit, Wiseman fell to the ground and pointed his gun at Trooper Walters. Troopers Harris, Walters, and Batschelet each fired on Wiseman. Trooper Walters fired three rounds, at least two of which struck a school bus approximately a half-block away.⁴ Trooper Walters moved backwards away from Wiseman and tripped over a curb and fell to the ground. Harris also fired three rounds at Wiseman.



Figure 1: Still photographs from local surveillance cameras capturing Wiseman fleeing from police through the streets of Newport armed with a handgun.

Route 141

Troopers Harris and Batschelet pursued Wiseman on foot onto the Route 141 offramp. Walters ran to his patrol vehicle and drove onto the off-ramp. Harris verbally commanded Wiseman to get on the

⁴ The school bus, Knotts bus number 15, was struck three times. Only two of the projectiles were recovered and, therefore, the source of the third projectile is unknown. One round struck the door to the bus and lodged in the driver’s arm rest, another hit the roof of the bus, and the third struck the metal frame between the windows. The school bus was transporting students to Delcastle Technical High School when it was struck by gunfire. Fortunately, no one on the bus was harmed during the incident.

ground. Wiseman attempted and failed to carjack a white Hyundai Santa Fe. He next attempted to carjack a blue Volkswagen Jetta but was unsuccessful. He then approached another white Hyundai Santa Fe, and successfully gained control of the vehicle, leaving the driver on the off-ramp. While on the ramp, the officers observed Wiseman brandish his handgun at drivers and he fired one round from his firearm, which did not strike anyone. After successfully carjacking the white Hyundai Santa Fe, Wiseman drove down the off-ramp, striking two other vehicles. Wiseman was the only occupant of the Santa Fe.

As Wiseman fled in the vehicle, Trooper Batschelet fired four rounds from his handgun at Wiseman's vehicle; one of these rounds may have struck Wiseman in the neck.⁵ Trooper Harris fired one round from his handgun at Wiseman's vehicle. Trooper Walters fired five rounds from his handgun at Wiseman's vehicle. After colliding with other motorists on the road, Wiseman fled northbound on Route 141 in the stolen Sante Fe. Troopers momentarily lost sight of Wiseman. A short time later, Trooper Hudak located the stolen vehicle traveling southbound on Route 141 toward I-95. The DSP Troop 4 helicopter joined the pursuit as well and called out Wiseman's location.⁶ Trooper Hudak followed Wiseman as he drove recklessly through traffic towards the I-95 exit. It is unclear as to when, but it appears that Wiseman fired at least one shot while inside the stolen Hyundai Sante Fe. This was determined through a forensic firearms examination of a discharged cartridge case recovered from the inside of the stolen vehicle.

Highway Pursuit – I-95, Route 273, Route 40

With several patrol vehicles in pursuit, Wiseman exited Route 141 and fled southbound on I-95. Several law enforcement vehicles pursued Wiseman with emergency lights and sirens activated, but Wiseman refused to stop. Wiseman exited I-95 South at the Route 273 exit, crashed into several construction barriers and continued southbound on Route 273. Law enforcement officers who spotted Wiseman's vehicle saw him driving erratically, at a high rate of speed, weaving in and out of traffic and passing vehicles on the shoulder. At the intersection of Route 273 and Old Baltimore Pike he ran through a red light at a high speed. Wiseman turned south onto Route 13 and merged onto Route 40 heading west. On Route 40 Wiseman struck another vehicle but continued to flee with law enforcement vehicles in pursuit. Wiseman turned onto S. College Avenue (Route 896), headed northbound towards the City of Newark.

Newark

Red Roof Inn

Wiseman fled from officers past the Route 896/I-95 interchange and turned right into the parking lot of the Red Roof Inn. In the parking lot, Wiseman encountered Trooper Sean Devenney. Wiseman drove towards Devenney. Devenney, attempting to disable Wiseman's vehicle, drove directly into

⁵ The ballistics report reflects that one of Trooper Batschelet's rounds truck Wiseman in the neck, though it is unclear whether this occurred on E. Market Street or on the Route 141 offramp.

⁶ During the incident, the pilot operating the Trooper 4 Helicopter placed a flash drive in the recording device located inside the helicopter. The Pilot immediately realized that the flash drive was not formatted and therefore was unable to record the incident. The Pilot did not have a formatted flash drive on the helicopter, therefore no video recording was obtained from Trooper 4.

Wiseman's vehicle. After the two vehicles collided, Wiseman drove around Devenney's vehicle and left the parking lot, heading towards Robscott Manor, a residential neighborhood behind the Red Roof Inn.

[Robscott Manor](#)

Wiseman entered the Robscott Manor neighborhood on Edjil Drive. He proceeded on Edjil Drive to Matthew Flocco Drive. A family living in Robscott Manor was on the sidewalk adjacent to Matthew Flocco Drive when Wiseman pulled up, opened the door and asked them where their vehicle was. They responded that they didn't have a car nearby and Wiseman fled with law enforcement close behind him. A family member observed that Wiseman had a gun in his hand during this incident.

Wiseman collided with a white Honda Accord at the stop sign on Edjil Drive. Wiseman also collided with multiple law enforcement vehicles while driving out of the neighborhood. He then turned left onto Old Cooch's Bridge Road and headed toward a dead-end adjacent to a commercial property where Sobieski Inc. is located. The dead-end of Old Cooch's Bridge Road is separated from the southbound lanes of I-95 by a small, wooded area. Wiseman drove to the dead end of Old Cooch's Bridge Road, abandoned the Hyundai Santa Fe, and proceeded on foot, gun in hand, through the wooded area to I-95.

[I-95 by the Route 896 exit](#)

Wiseman ran on the southbound lane of I-95, brandishing his firearm and attempting to carjack several vehicles. Wiseman ran in front of a black Tesla sedan, pointed his handgun at the driver's head and ordered him to leave the vehicle. Trooper Walters, standing at a wire fence at the edge of the grass lawn in front of Sobieski Inc., fired one round in Wiseman's direction as Wiseman stood at the driver's door to the Tesla. The round pierced the Tesla's windshield and lodged in the driver's door. Wiseman ran off, against the flow of traffic, to attempt to carjack other vehicles. As he did, Trooper Walters fired nine more times in Wiseman's direction.

Wiseman approached a silver Jeep Liberty, and attempted to open the driver side door, but failed. Wiseman was bleeding from his nose and mouth at the time. Wiseman then approached a Subaru Outback and fired a round into the Subaru towards the driver which pierced the windshield and embedded in the driver's side dashboard. The driver drove away. During these attempted carjackings, Newport Police Officer Thomas Kashner fired ten rounds in Wiseman's direction from his location on the two right lanes of I-95 South. While Wiseman was attempting to carjack the Subaru, Trooper Raushan Rich fired three rounds in Wiseman's direction from the grassy area behind the guardrail to I-95.

Wiseman then approached a white Lexus NX300. Wiseman pointed the handgun at the driver's head and ordered her out of the vehicle. He then opened the driver's door and removed her from the vehicle. Wiseman drove off in the Lexus southbound on I-95; there were no occupants in the vehicle other than Wiseman. The driver exited the roadway and was ushered to safety. It appears that Wiseman fired at least one round from his firearm while inside the Lexus. This was determined through a forensic firearms examination of a discharged cartridge case recovered from the backseat of the Lexus.

New Castle City Officer Rich Perillo fired one round from his handgun at the stolen Lexus as it passed him on I-95. From approximately the same location, New Castle County Officer Ryan Stanek fired five rounds from his handgun at the Lexus as it passed by. Officer New Castle County Officer Kyle Simpson fired a shot from his handgun at the Lexus from the guardrail of I-95.

Elsmere Police Detective Jon Giles fired twelve rounds at the Lexus from the far-right lane. Through a subsequent forensic firearms examination, it was learned that several projectiles fired by Giles were found in the body of the Lexus; one was recovered from the inside of the mask which Wiseman was wearing.

Delaware State Police Trooper James Boyda, from a position behind a marked police vehicle on the right shoulder of I-95 South fired four rounds from his handgun at the Lexus as Wiseman drove by. Delaware State Police Trooper Domenica Trace, from the left shoulder of I-95 North, fired one round at the Lexus aiming for the driver's door. Trooper Devenney was on I-95 South on foot when the Lexus drove towards him. Trooper Devenney fired a round from his rifle into the Lexus, striking the windshield. Trooper Devenney then stepped aside and fired his rifle eight more times through the passenger window as the Lexus passed him. New Castle County Police Officer Robert Grover, from behind the white Lexus, leaned out of the driver's door of his patrol car and fired five times into the rear of the Lexus using his handgun.

Delaware State Police Trooper Tom Macauley, from the guardrail, fired into the passenger door of the Lexus as it passed by his position. Delaware State Police Trooper Brian Crisman took a position behind the right shoulder guardrail on I-95 South and fired three to four rounds from his handgun at the white Lexus, aiming for the area where the door stops and the window begins on the passenger side front door. Delaware State Police Trooper Justin Evans, standing at the wire fence at the edge of the Sobieski property, fired fourteen rounds from his handgun at the white Lexus as Wiseman drove past.



Figure 2: From left to Right: Wiseman carjacking white Hyundai on off-ramp of Route 141; Dashcam video from Tesla depicting Wiseman attempting to carjack the Tesla's Driver on I95; Motorist fleeing from her white Lexus SUV after being carjacked by Wiseman on I95.

Final Resting Place

The Lexus continued to travel southbound on I-95 at a slow rate of speed. Wiseman had not given any indication that he intended to surrender or give up his firearm. New Castle County Corporal Jacob Gruber pulled his vehicle in front of the Lexus to bring it to a stop just south of the I-95 and Route 896 interchange. Officers Grover and Mills then parked their vehicles behind the Lexus, pinning it in.

Delaware State Police Trooper Brian Ritchie, standing at the guardrail for I-95 North, fired three rounds with his handgun at the driver side of the white Lexus. Ritchie's projectile was located on the Lexus's backseat floor on the driver's side. A second projectile was found in Wiseman's right ankle. Trooper MacCauley fired nine rounds with his rifle from the driver side door of Officer Grover's vehicle. Delaware State Police Trooper Casey Hoffman, armed with his rifle, took a position near the driver side of Officer Grover's patrol vehicle, and fired two rifle rounds into the driver's door of the Lexus. New Castle

County Officer Ryan Stanek fired 10 rounds with his rifle from the passenger side of Trooper Boyda's patrol vehicle at the passenger side of the white Lexus.

Officers then took cover behind the white Lexus at which time ballistic shields were collected and teams were formed to approach and clear the Lexus. Prior to the approach, New Castle County Officer Andrew Loftus fired two 40mm "Less Lethal" ammunition rounds into the rear window of the Lexus so officers could see into the vehicle. Officer Grover was one of the officers to approach the Lexus from the passenger side. He used his rifle to strike the rear passenger window and shatter the glass so he could see inside. It was called out that the subject was deceased (10-91) at this time. Officer Grover then yelled out, "he's moving" and fired one rifle round into the rear passenger window at Wiseman.

Officers approached the driver's side door of the stolen Lexus where Wiseman was seated. When the driver's door was opened Newark Police Officer Casey Rivers observed a black handgun on Wiseman's lap. Officer Grover removed Wiseman from the vehicle and laid him on I-95 just outside of the white Lexus. The white Lexus, still running, was in reverse and backed into a patrol vehicle as Wiseman was removed. The vehicle was shut off and secured. Wiseman was pronounced deceased at the scene by New Castle County paramedics. Wiseman was covered with a tarp and the scene was secured. The handgun recovered from Wiseman's lap was a .380 semi-automatic handgun. Through subsequent forensic firearm examinations, it was determined that Wiseman fired at least three rounds during this incident. Additionally, the examination revealed that a bullet recovered from the dashboard of a bystander's Subaru Outback was fired from Wiseman's handgun.

Several civilian vehicles on I-95 were struck by errant projectiles during this incident. A blue Saab was struck by a projectile that shattered, causing a fragment of the projectile to become lodged in the back of the driver's head. The driver was transported to the hospital and treated for minor injuries. A partial projectile of a probable rifle round was found in the hood of the blue Saab. Another projectile pierced and passed through a canvass bag attached to the roof of a gray Toyota Corolla. The Corolla's windshield was also struck by a projectile. A Kamps Logistics Freightliner Tractor Trailer driving north on I-95 had a damaged passenger side mirror, which may have been caused by gunfire.

CONCLUSION

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.⁷ Title 11 § 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." Subsection (c) of the Section 464 specifically addresses the use of deadly force, stating that it is justifiable "if the [officer] reasonably believes that such force is necessary to protect the [officer] against death [or] serious physical

⁷ Delaware Department of Justice Criminal Division Policy Manual citing NDAA National Prosecution Standards (2nd ed. 1991) §§ 43.3.

injury[.]” The State will also determine whether the use of deadly force by the officer was permitted pursuant to Title 11 § 465 of the Delaware Code, use of force for the protection of other persons.⁸

Under Delaware law, the state of mind of a reasonable person 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 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).

During the initial foot pursuit and carjacking incident in Newport, and while Wiseman was driving a second carjacked vehicle on I-95 southbound, multiple officers used deadly force, as defined by 11 *Del. C.* § 471(a). Several bystander vehicles were struck by projectiles fired from officers’ weapons and Wiseman’s weapon; one bystander sustained a minor injury. The instances where bystanders or vehicles were struck by officer fire are discussed below.

On each occasion, and under the circumstances as observed and known to them at the time, the involved officers reasonably believed that deadly force was necessary for the purposes of protecting themselves, their fellow officers, and the public from Wiseman’s unlawful use of deadly force.

During the initial foot pursuit and carjacking in the Newport area, Troopers Harris, Walters, and Batschelet each fired upon Wiseman. The Troopers use of deadly force was justified given the circumstances. When Trooper Walters responded to East Market Street in Newport, he was aware that there was a suspicious male with a gun. He became aware that the suspect had fled when confronted by Trooper Harris, and that Trooper Harris was engaged in a foot pursuit. When Trooper Walters arrived at the scene on Market Street, he observed Wiseman running with a firearm in his hand. Trooper Walters gave Wiseman commands to drop the gun, which were ignored. He pursued Wiseman, who crouched or fell, and pointed his firearm at Trooper Walters. Trooper Walters fired his weapon and fell, then fired two more shots towards Wiseman from a seated position. Trooper Walters was the first police officer to fire his service weapon at Wiseman. Given these facts, Trooper Walters was justified in using deadly force towards Wiseman because of a reasonable belief that Wiseman would use unlawful deadly force towards him or his fellow officers causing either death or serious physical injury. The same analysis and conclusion is applicable to the use of deadly force by Troopers Harris and Batschelet.

⁸ “(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.”

At the time Trooper Walters was firing his weapon towards Wiseman, Knotts Transportation bus #15 pulled into the intersection at East Market Street and the ramp from 141 into Newport, and into the line of fire of Trooper Walter's shots. Two bullets struck the bus, one of which struck near the bus driver. The projectile found in the direct vicinity of the driver, under other circumstances, would be sufficient to establish a charge of Reckless Endangering 1st Degree pursuant to 11 *Del. C.* § 604, as Trooper Walter's shot created a substantial risk of death to the bus driver. Further, if Trooper Walters was reckless in shooting his firearm towards Wiseman and striking the bus — and thus substantially risking the bus driver's death — the justification defenses, pursuant to 470(b), including protection of self and protection of others listed *supra* would be unavailable to him.

However, after reviewing the available evidence, including radio transmissions, witness statements and body worn camera footage, it is our conclusion that there is insufficient evidence to show that Trooper Walters recklessly created a risk of injury to the bus driver or others on the bus. "Recklessness," in legal terms, requires that a person "knows and consciously disregards a substantial risk," that their conduct will lead to certain consequences. Wiseman was actively pointing his firearm at Trooper Walters, and Walters fired in response. Trooper Walters subsequently fell, putting himself in a more vulnerable position, and still reasonably believed that his life and the life of his fellow officers were in danger, so he continued firing.

There is no evidence that Trooper Walters was aware of the location of the Knotts School bus when he fired his weapon towards Wiseman or that he consciously disregarded the location of the bus. Body worn camera footage shows mere seconds between Trooper Walters first engaging with Wiseman and the bus rolling into the intersection. (*See Figure 4*). Trooper Walters was required to react instantaneously after Wiseman pointed his handgun at the Trooper. The immediate necessity for Trooper Walters to protect himself against death or serious physical injury does not support a finding that he knowingly and consciously disregarded a substantial risk of injury to innocent persons.



Figure 4: Still photographs from the body worn camera of Trooper Batschelet depicting Trooper Walters chasing Wiseman on foot through Newport. The still photographs show the school bus (circled in red) pulling into the intersection, and entering the Troopers' line of sight, after the initial shots were fired.

After abandoning a stolen vehicle on Old Cooch's Bridge Road, Wiseman fled on foot to I-95 with weapon in hand. Trooper Walters pursued Wiseman as Wiseman attempted to carjack multiple vehicles on I-95. At this point Trooper Walters fired at Wiseman multiple times from the embankment parallel to I-95 South.

At one point, Wiseman ran directly towards a black Tesla. Wiseman attempted to open the driver's side door while pointing a gun at the driver and gesturing for the driver to get out of the vehicle. While Wiseman was confronting the driver, a bullet from Trooper Walters' service weapon struck the Tesla's windshield and lodged in the driver's side door. The driver was uninjured, and Wiseman was not struck by the bullet.

The projectile found in the direct vicinity of the driver, under other circumstances, would be sufficient to establish a charge of Reckless Endangering 1st Degree pursuant to 11 *Del. C.* § 604, as Trooper Walter's shot created a substantial risk of death to the driver of the Tesla. Further, if Trooper Walters was reckless in shooting his firearm towards Wiseman thus creating a risk of substantial death towards the driver, pursuant to 470(b), the justification defenses, including protection of self and protection of others listed *supra*, would be unavailable to him.

After a review of the available evidence, including but not limited to radio transmissions, witness interviews and body worn camera footage, and under the circumstances as observed and known by Trooper Walters at the time of the incident, we conclude that there is insufficient evidence to prove that Trooper Walters acted recklessly when he fired his service weapon at Wiseman as Wiseman approached the Tesla on I-95. Wiseman was armed with a handgun and had previously carjacked another vehicle on the offramp from Route 141 Northbound into Newport. Wiseman had not been slowed or stopped by previous engagement with officers, had been involved with multiple vehicle collisions and at least one attempt to ram a police vehicle during a prolonged pursuit. Wiseman was actively disregarding all orders to drop his weapon and surrender. Interviews with witnesses at the scene indicate that Wiseman was actively shooting his firearm at vehicles when he was running against traffic in the southbound lanes of I-95. Trooper Walters would have been justified in using deadly force on Wiseman to prevent Wiseman from using unlawful deadly force on other officers and, specifically, the drivers of vehicles that Wisemen was actively attempting to carjack. Trooper Walters told investigators that he put his red dot on Wiseman and felt that he had a clear shot due to his relative elevation and positioning. A review of his body worn camera footage indicates that Trooper Walters fired only one round while Wiseman was approaching the Tesla, substantiating his stated belief that he had a clear shot. Under the circumstances as presented, we cannot find that Trooper Walters "knew and consciously disregarded a substantial risk" that his shot would strike any innocent bystander.

A driver of a blue Saab was injured, and his vehicle damaged, during the pursuit on I-95. The blue Saab was traveling on I-95 southbound, preparing to take the Route 896 exit, when the Driver observed Wiseman running northbound on the highway. The vehicle drove past the foot pursuit and pulled over on the left side of I-95 Southbound. The rear window of the vehicle was hit with a projectile and the Driver was struck by bullet fragments in the back of the head. A partial bullet fragment was recovered from within the Driver's clothing. A subsequent forensic firearms examination determined that the partial bullet fragment was fired from a rifle. However, because of damage to the fragment, the forensic firearms examiner was unable to determine the bullet's origin. The Driver was treated for minor injuries and subsequently released from Christiana Care.

The forensic firearms examination determined that the bullet fragment recovered from the Driver's clothing was fired from a rifle but, due to its damage, was unable to determine from which rifle it was fired. There were multiple law enforcement officers that were armed with rifles, and fired, at this location of the pursuit. The officers equipped with rifles were positioned at various locations along I-95 south near the Route 896 exit. When they fired, each officer was aware that Wiseman was armed with a firearm, brandishing it at drivers, and actively attempting to carjack innocent motorists. Given the circumstances known to the officers at the time, they were justified in their belief that deadly force was necessary to protect other officers and bystanders.

As to the officers that fired their rifles at Wiseman, if an officer was justified in using deadly force toward Wiseman, but negligently or recklessly caused injury to an innocent person, it would be sufficient to constitute a charge of Assault 2nd Degree under 11 *Del. C.* § 611 (as the injury was negligently or recklessly caused by use of a deadly weapon). However, regardless of which officer ultimately fired the round that struck the blue Saab, the analysis and conclusion remain the same. We conclude that there is insufficient evidence to show that any of the officers recklessly or negligently caused injury to an innocent person.

First, it was reasonable for the officers to believe that deadly force was necessary in the situation. Second, the injury caused to the innocent person was not the product of the any negligent or reckless actions by the officers. Pursuant to its legal definition, a person acts negligently when that person "fails to exercise the standard of care which a reasonable person would observe in the situation."⁹ As is applicable to the conduct of all implicated officers, the use of force must be analyzed through the lens of reasonableness.¹⁰ Justifiably so, the law just does not require officers to act perfectly in these situations, but reasonably.¹¹ We must also consider the attendant circumstances when determining what is reasonable. In the present situation, the officers that fired their rifles were responding to an extremely dangerous and dynamic situation that was unfolding quickly. Each officer expressed their reasonable belief that the use of deadly force was necessary. Furthermore, considering the chaotic circumstances and the available evidence, the officers were not negligent or reckless by ignoring the potential risk presented to innocent third parties. The threat Wiseman presented to the public and other officers was quite real and grave. Officers were forced to make split-second decisions without the luxury of lengthy deliberation. Under these circumstances the officers' decisions were reasonable.

Based upon the evidence available, we conclude that law enforcement reasonably felt in fear for their own lives, the lives of their fellow officers, and lives of the public when Wiseman: pointed his firearm at Trooper Walters; threatened motorists with his firearm and carjacked a vehicle to evade police on the 141 off-ramp; led police on a lengthy vehicle pursuit during which he drove with reckless disregard for human life; threatened several motorists on I-95 with his firearm and carjacked a second vehicle in an attempt to evade police; fired several rounds from his handgun, with at least one bullet striking a bystander's vehicle. While fleeing from police after the first carjacking, Wiseman drove erratically and at high rates of speed, striking multiple vehicles and putting both law enforcement and the public in danger.

⁹ 11 Del. Code § 231(d).

¹⁰ 11 Del Code § 471(e)(2), "when applied to [an officer] . . . acting in the officer's official capacity, [reasonably believes] means holds a belief that is reasonable from the viewpoint of a reasonable law-enforcement officer in the [officer's] situation under the circumstances."

¹¹ *Id.* 11 Del Code § 464(a), 465(a)(1), 467(a)(1).

We conclude that because officers reasonably felt in fear for their lives and the lives of other officers when they used force, such force was not criminal per 11 *Del. C.* § 464 (“self-protection”) and § 465 (“protection of others”).

Additionally, the officers who fired their weapons at Wiseman were neither negligent nor reckless in forming the belief that force was necessary for the protection of self or others. Troopers Harris, Walters, and Batschelet, witnessed Wiseman point a gun at Trooper Walters. Numerous officers witnessed Wiseman drive a carjacked vehicle without regard for the safety of others and threaten police and motorists with a gun. Officers fired at Wiseman during the foot pursuit in Newport, after Wiseman pointed his firearm at Trooper Walters, and fired at the carjacked Hyundai Santa Fe as it drove past them. Officers involved in the car pursuit of Wiseman saw him drive recklessly and commit countless traffic violations, placing all motorists he encountered in harm’s way. Officers fired at Wiseman when he ran onto the southbound lanes of I-95 and threatened motorists and officers with his gun. Numerous officers fired at the second vehicle carjacked by Wiseman as he drove past them. The officers reasonably believed that the use of deadly force was necessary under the circumstances. Further, the officers were neither reckless nor negligent in the forming the belief that the use of deadly force was necessary. Similarly, given the facts and circumstances surrounding these incidents, the officers’ use of deadly force was not negligent or reckless in causing injury or creating a risk of injury to innocent persons as required by 11 *Del. C.* § 470(b).

Having determined that the officers use of force complies with the requirements and restrictions set forth in the relevant self-defense statutes, it is the finding of this investigation that the officers’ actions were not criminal in nature. Lastly, per Title 29 §2553(a)(3)b3, this report must include whether race was found to be a relevant or motivating factor in the use of force. This Division’s investigation found that race was not a relevant or motivating factor in the officers’ use of force. Wiseman was a white male, and a majority of the law enforcement officers that used deadly force were white males as well.