

FINAL REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

USE OF DEADLY FORCE BY THE DELAWARE STATE POLICE

SUBJECT: TREMAINE D. JACKSON

TROOPERS: MICHAEL EFELIS AND THOMAS MACAULEY

DATE OF INCIDENT: AUGUST 31, 2023

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 Delaware State Troopers against Tremaine D. Jackson (“Jackson”). 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.”¹ 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.

The purpose of this investigation is limited to determining 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 regarding the police agency’s policies or procedures, and whether the involved officers’ actions complied with such.

FACTS

Around 7:00 AM on August 31, 2023, the Delaware State Police (“DSP”) Special Operations Unit continued an investigation to locate a fugitive named Tremaine D. Jackson (“Jackson”). Jackson was wanted on twenty-one (21) active arrest warrants (primarily for repeated retail thefts/shopliftings) from various police agencies in Delaware, four (4) violations of probation pending in the Delaware Superior Court, and two (2) active out-of-state warrants. DSP Troopers were familiar with Jackson, and his extensive fugitive status and criminal history. Additionally, they were aware that Jackson had recently led police on two separate car chases, both occurring in August of 2023. During the first pursuit, Jackson collided with a Trooper’s vehicle, a civilian’s vehicle, and managed to escape. The second vehicle pursuit occurred when Jackson was able to successfully flee from Troopers after committing a retail theft.

On the date in question, the Delaware State Police’s Electronic Surveillance Unit was able to determine Jackson’s whereabouts. He was in New Castle County at 2225 Hessler Blvd, the location of a Lowe’s Home Improvement retail store. Responding plain-clothed Troopers were able to locate Jackson inside of the Lowes. Given his history of fleeing, these Troopers requested additional support to apprehend Jackson. Shortly thereafter, Troopers assigned to DSP’s Special Operations Response Team (“SORT”) and the Drug Unit arrived at the location.

¹ 29 Del. Code § 2553(a)(3)

Troopers established a controlled perimeter around the store, with police vehicles positioned in the front and back of Lowes. Troopers inside the establishment were following Jackson and were able to relay his actions to other Troopers over the radio. After filling a shopping cart full of items, Jackson ultimately exited the rear of the business without paying for the merchandise. This information was relayed over the radio to Troopers positioned outside the store. SORT members (Troopers Joshua Cary, Mitchell Moyer, and Michael Efelis) were in an undercover pickup truck positioned in the rear of the business when they heard that Jackson was exiting the store from the rear. They observed Jackson exit through the lumber yard storage area in the back of Lowes pushing a shopping cart full of merchandise. As Troopers approached Jackson in the undercover pickup truck, he pushed the shopping cart full of stolen items in front of their truck and ran toward his vehicle, which was parked along a guardrail on the back access road to the business.

Trooper Cary ("Cary") exited the pickup truck from the front passenger side. Almost immediately upon giving chase, Cary tore his quadricep and went to the ground. Trooper Moyer ("Moyer") exited from the back seat and began chasing Jackson. However, Jackson ran to his vehicle and got into the driver's seat. Moyer caught up to Jackson and attempted to pull him out of the vehicle. Jackson was holding onto the steering wheel, preventing Moyer from pulling him out of his car. Jackson was able to start his car. Trooper Efelis ("Efelis"), who was driving the Troopers' undercover pickup truck, pulled the truck in front of Jackson's vehicle to prevent it from fleeing the scene. This tactic is commonly referred to as a "pinch" maneuver which requires officers to position their vehicle in such a way that it blocks the path of the suspect's vehicle, preventing it from fleeing the scene. Efelis positioned the pickup truck in front of Jackson's vehicle, "pinching" it in between the Troopers' truck and the guardrail, almost entirely blocking any path of escape. (See Figure 1).



Figure 1: Depicted above is an ariel view of the Lowes located at 2225 Hessler Blvd. Identified in the picture are the locations of the lumber yard (blue), Jackson's vehicle (white), and the Trooper's pickup truck (gray) circled in red (not to scale).

Efelis opened the driver-side door of the truck, further blocking the path of Jackson's vehicle. (See *Figure 2*). At the same time, Efelis exited the driver's seat of the pickup truck. Jackson, still behind the wheel, continued to accelerate forward, forcing Efelis to jump onto the hood of Jackson's car to avoid being struck. With the engine revving, Jackson's vehicle pushed against the Trooper's pickup truck, lunging it forward, crushing the metal of both cars, with Efelis now on Jackson's hood. This did not stop Jackson from continuing to accelerate, trying to force his vehicle free.



Figure 2: Location: Hessler Blvd. in the rear of Lowes. Depicted are front and side views of Jackson's white sedan and the Troopers' gray pickup truck.

Efelis did not have his handgun drawn when he initially got onto the hood of Jackson's vehicle. Jackson continued to accelerate, and the vehicle continued to lunge forward, causing Efelis to slide down the hood of the car. Efelis was able to regain his footing and at that moment drew his weapon. Efelis continued to give multiple commands, telling Jackson to stop revving the engine. Each time that Jackson revved the engine, his vehicle would lunge forward, continuing to crush both cars. Efelis shouted additional commands for Jackson to stop and get out of the car. Moyer was still on the driver's side of Jackson's vehicle attempting to pull him out of the car through the driver's side window.

Another group of SORT members was in a truck positioned in the front parking lot of the Lowes. This included Trooper Dan Eby ("Eby"), Trooper Michael Macauley ("Macauley"), and Lieutenant Matt Fuski ("Fuski"). When these Troopers heard that Jackson exited from the rear of the building, they immediately made their way to that area. Fuski was driving the truck, with Macauley and Eby in the passenger seats.

As they approached the rear of the building, Macauley noticed Cary, a SORT colleague, lying on the ground. Macauley knew that Cary was in a truck with Efelis and Moyer. At this point, Macauley suspected that Cary had been struck by Jackson's fleeing vehicle and was concerned about the safety and wellbeing of his other colleagues. Fuski kept driving down the back access road of the Lowes where the other Troopers were located. Macauley immediately saw Moyer,

hanging out of the driver's side of Jackson's vehicle. When the other Troopers arrived, Jackson was still in the driver's seat of his vehicle trying to accelerate through its "pinched" position. Macauley saw that the truck, driven by Efelis, was wedged in front of Jackson's vehicle. Macauley then saw Efelis get out of his pickup truck and onto the hood of Jackson's vehicle. Macauley and Eby both exited their vehicle and ran toward Jackson's vehicle.

Macauley positioned himself on the hood of Jackson's vehicle next to Efelis. Both were repeatedly shouting commands to stop resisting arrest. Efelis yelled at Jackson to "give up," "stop gassing it," or he would "have to shoot." When Jackson did not respond to their commands and continued to accelerate, Efelis fired one round at Jackson. Efelis would explain that he believed that Moyer, Macauley, and himself were in danger of being seriously injured if Jackson continued to accelerate, which is why he shot. After a brief pause, both Efelis and Macauley believed Jackson was about to surrender, but instead, Jackson accelerated again. Macauley felt that Moyer, Efelis, and himself were in danger of being seriously hurt if Jackson continued to accelerate. At that moment Macauley fired one round at Jackson. When Macauley fired, he and Efelis were still on the hood of Jackson's car, and Moyer was actively trying to remove Jackson from the vehicle. Macauley and Efelis both discharged their firearms once, and both hit Jackson in the chest. Almost immediately after Macauley fired, other Troopers arrived on scene. They were able to help Moyer remove Jackson from his vehicle and began treating Jackson for his injuries. A SORT medic was on scene and began to treat Jackson's injuries. Although Jackson was still alive and responsive when he left the scene via ambulance, he ultimately succumbed to his injuries at a nearby hospital. A subsequent autopsy found that Jackson suffered two gunshot wounds to the chest, which were determined to be his cause of death.

PHYSICAL EVIDENCE

During the investigation surveillance footage was recovered from the Lowe's Home Improvement Store and the Delaware Department of Motor Vehicle, also located on Hessler Boulevard. Due to the types and locations of the cameras, the available surveillance footage did **not** capture the use of deadly force that is under review. The footage only captured the various police vehicles traveling down the back access road of the Lowes, which provided little to no value to this investigation. Also, the available body worn camera footage was of limited value to this investigation. At the time of this incident members of DSP's Special Operations Response Team ("SORT") were **not** equipped with body worn cameras during SORT operations. This would include Efelis, Macauley, Moyer, Cary, Eby, and Fuski. The only pertinent body worn camera footage was obtained from Sgt. Pierre Lawler (non-SORT member), who arrived at the scene immediately after the shots were fired. Lawler's body worn camera footage does capture Efelis and Macauley positioned on the hood of Jackson's car and Moyer attempting to remove Jackson from the driver's seat. (See *Figure 3*). The footage captured Jackson's continued efforts to resist arrest after being removed from his car. Sgt. Lawler can be heard reacting to Jackson's attempt to grab his firearm.



Figure 3: Footage from the body worn camera of Sgt. Lawler, who was not on scene when shots were fired. Lawler arrived shortly thereafter.

TROOPER INTERVIEWS

TROOPER EFELIS

Trooper Efelis participated in a recorded interview after the incident occurred. He stated on the day of the incident, he was assisting units with the apprehension of Jackson. Efelis was familiar with Jackson from a prior arrest, was present at the briefing of Jackson, and knew of his prior history of evading law enforcement and resisting arrest.

On the day of the incident, Efelis was driving an undercover pickup truck with Troopers Cary and Moyer in the passenger seats. Efelis stated he was initially parked in the rear of the Lowes when he observed Jackson leaving the rear of the store pushing a shopping cart full of stolen items. Efelis drove toward Jackson and stopped so that Cary and Moyer could exit the truck and give chase. When Jackson observed the Troopers, he pushed the shopping cart in front of their truck and fled. Efelis noticed that Cary hurt himself and was disabled. Efelis briefly stopped to check on Cary to make sure he was okay and then continued to drive toward Moyer to help him assist with apprehending Jackson.

Efelis stated that as he turned the corner on the access road, he could see Moyer attempting to pull Jackson out of a car. He then noticed that Moyer was pinned in between the

car and a guardrail, and he believed that Moyer would be hurt if Jackson was able to pull away. Efelis stated that he pulled his truck to the right front of Jackson's vehicle to block his path. He exited the truck and tried to make his way around to the driver side of Jackson's vehicle by going over the hood of the vehicle but slid off when Jackson pressed the accelerator and gassed the car to lunge it forward. Efelis stated he was able to regain his footing and jumped back on the hood. This time, however, he drew his gun and started giving Jackson multiple verbal commands to stop or he was going to shoot.

At this time Macauley had joined him on the hood of Jackson's vehicle. Efelis detailed how Jackson continued to disregard verbal commands and accelerated the car lunging it forward, so he fired his handgun one time at Jackson's chest area. Efelis and Detective Macauley continued to give verbal commands, telling Jackson to place the vehicle in "park." Jackson accelerated the vehicle another time and that is when he recalls hearing Macauley discharge his handgun one time. Efelis stated that several other officers had arrived and were able to assist Moyer with removing Jackson from the vehicle. He said that Jackson continued to resist and at one point heard Sgt. Lawler saying that Jackson was trying to grab his gun. Jackson was handcuffed and others began providing medical aid to him. Efelis believed that force was necessary to save Moyer's life and prevent serious physical injury or death to Macauley or himself.

TROOPER MACAULEY

Detective Macauley participated in a recorded interview after the incident occurred. He stated that while at Troop 1, he was advised by DSP Electronic Surveillance Team that Jackson appeared to be near Lowes on Hessler Boulevard in New Castle, Delaware. Macauley, along with several SORT members and other units, responded to the Lowes to establish a plan to arrest Jackson. Macauley stated he and the assisting officers were aware of Jackson's flight risk and his prior incidents with law enforcement.

Macauley was initially located in the front parking of Lowes in an undercover truck with Lt. Fuski (driver) and Trooper Eby (back seat). Shortly after setting up, Macauley received information from undercover officers inside the Lowes that Jackson was inside the store and pushing a shopping cart loaded with store items. While waiting for Jackson to exit the store, Macauley heard over the radio that Jackson was attempting to leave from the rear of the store with a cart full of stolen merchandise.

Macauley stated they drove to the rear of the Lowes, where he observed Cary on the ground and first thought that Jackson had run him over while fleeing in his car. Macauley stated he did not see Jackson's vehicle, or the other Troopers at this time. Macauley believed that Efelis and Moyer went after Jackson. As Lt. Fuski drove down the access road they were able to see Jackson's white sedan with Trooper Moyer on the ground between a guardrail and the car. He also saw Trooper Efelis's undercover truck to the right of the sedan. It appeared that Jackson's car was wedged between the front of the truck and the guardrail. Macauley saw Moyer attempting to remove Jackson from his vehicle and watched as Efelis got out of his truck

and onto the hood of Jackson's vehicle. Macauley stated he could hear Jackson revving the engine and was concerned for Moyer and Efelis if Jackson's vehicle pushed through the truck. Macauley explained that SORT trains on tactical vehicle stops and maneuvers with both suspect cars and SORT trucks, and that he did so as recently as a few weeks prior in the month of August. In those trainings, he was taught that smaller vehicles can eventually push through larger trucks if the truck is not itself applying pressure with acceleration. With no one behind the wheel of the Trooper's undercover pickup truck, it was apparent that no one was applying pressure with acceleration.

Macauley took up a position on the hood and could hear Efelis giving Jackson commands to 'give up' and 'stop gassing it' or he would 'shoot'. Macauley stated that Efelis discharged his firearm one time at Jackson. Macauley thought that Jackson would 'give up' after being shot once. Instead, Jackson continued accelerating his vehicle, smashing into the open driver's side door of the Troopers' pickup truck. When it became clear to Macauley that Jackson was not going to stop, he discharged his firearm one time at Jackson. Macauley stated that he did this because he feared that Efelis, Moyer, and himself could be seriously injured or killed if Jackson was able to push his vehicle free.

TROOPER EBY

Trooper Eby participated in a recorded interview after the incident occurred. On the morning of August 31, 2023, Eby was part of the briefing on Jackson and the plan to arrest him. Eby recalls that in Jackson's criminal background he was wanted for, among other things, fleeing and ramming a police car during a prior pursuit.

Once at the Lowes on Hessler Blvd, Eby was positioned in the front parking lot, in a truck with Lt. Fuski (driver) and Detective Macauley (front seat passenger). Macauley was calling out updates on Jackson's movements. Eby recalls Fuski driving quickly to the back parking lot once they knew that Jackson was fleeing out the back of the store. As they approached the rear of the store, Eby saw Cary picking himself off the ground, clearly in pain. With the way Cary looked, Eby thought Cary got run over by a car. As Fuski turned the corner down the access road behind Lowes, Eby saw the other SORT truck in front of Jackson's vehicle. Eby observed Trooper Moyer on the ground wedged in between the driver's side door and the guardrail and Efelis on the hood of the suspect's vehicle. Eby remembered thinking if that car twisted off and drove forward, Trooper Moyer was going to be seriously injured or killed.

Eby knew he could not help Moyer directly in that spot between the guardrail and the car, so he hopped over the guardrail to the left rear of Jackson's car and ran toward the front. Eby had his rifle drawn but had no clear line of fire to Jackson. Eby said he could hear the tires squealing from Jackson's vehicle trying to accelerate and saw the car sliding forward smashing up against the Troopers' pickup truck. Eby said that as Jackson is "gassing" the car, the SORT truck door is moving forward and getting bent. Eby said that as Moyer was trying to get Jackson out, Jackson "revved" the car again. Eby heard the other Troopers shouting commands for

Jackson to stop and get out of the car. Eby was also giving commands for Jackson to stop. Eby heard a gunshot and the glass break on the car. After the first shot, Eby said Jackson was still trying to get away as he continued to press on the gas pedal causing the engine to race. Then, the second shot went off. Eby said the reason he did not shoot is because he did not have a clear angle. Eby believed Moyer's life was "100% in danger" because he was wedged in between Jackson's driver side door and the guardrail. Eby recalled Jackson still resisting commands while being removed from the car. Eby then saw a SORT medic rendering aid and noted that Jackson was still alive and responsive when he was taken from the scene by ambulance.

CONCLUSION

The Delaware Department of Justice's Division of Civil Rights and Public Trust 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.² When determining the probability that a conviction can be obtained, the State is always cognizant that it has the burden to prove the crime(s) charged *beyond a reasonable doubt*, a demanding standard. It must also consider any potential defenses to the crime(s) charged and the likelihood of its success. Central to any analysis involving an officer's use of force is the applicability of Delaware's "Justification Defenses," which are commonly referred to as its "self-defense laws." 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." "A person using protective force may estimate the necessity of such force, under the circumstances that the person believes to exist."³ Title 11 § 464(c) through (e) 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 injury[.]"⁴ Title 11 § 464(e)(2)(C) articulates that law enforcement officers are *not required to retreat if at all possible, nor refrain* from making an arrest or preventing an escape because the suspect is resisting, to be justified in their use of deadly force in the performance of their duties. The State will also determine whether the use of deadly force by the officers was justified under Title 11 § 465 of the Delaware Code, which

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

³ 11 Del Code § 464(b); See Delaware Superior Court Pattern Jury Instruction 5.11 (2024).

⁴ 11 Del Code § 464(c)-(e).

involves the use of force for the protection of others.⁵ The same legal principles that apply to self defense also apply to the defense of others.⁶

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(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. When applied to a person who is a law enforcement officer acting in their official capacity “reasonably believes” means “holds a belief that is reasonable from the viewpoint of a reasonable law enforcement officer” in the same situation under the circumstances.⁷ 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.⁸

In this case, the use of deadly force by Troopers Efelis and Macauley were justified, as a matter of law, under self-defense and in defense of others. It was evident from Jackson’s past and present conduct that he would attempt to evade arrest, at all costs. Jackson was a wanted fugitive twenty-six (26) times over. He had twenty-one (21) active arrest warrants for crimes stemming from twenty-one separate incidents. He had four outstanding violations of probation and was wanted for crimes committed in other states. In August of 2023 alone, Jackson led police on two different vehicle pursuits, during which he was able to escape arrest. During one of those pursuits, Jackson crashed his car into a Trooper’s and civilian’s vehicles. Troopers Efelis and Macauley were familiar with these facts and with Jackson’s history.

Similar to past incidents, in the present case Jackson was attempting to flee from Troopers after stealing a shopping cart full of items from Lowes. It was evident from his reaction that Jackson was aware that the Troopers were law enforcement officers. Jackson disregarded repeated commands from multiple Troopers and attempted to flee in his vehicle. Despite being blocked in by the Trooper’s pickup truck, Jackson did not surrender. According to multiple Troopers, Efelis ordered Jackson to stop accelerating or he would shoot him. Jackson disregarded the warning and continued to rev his engine and “gas his car.” Efelis noted that the car would lunge forward whenever Jackson would rev his engine. This would cause Efelis to lose his footing and slide down the hood of the car. Macauley mentioned that his recent training taught him that smaller vehicles that are actively accelerating can push through larger vehicles that are not

⁵ “(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.”

⁶ See 11 Del. Code § 465

⁷ 11 Del. Code § 471(e)(2).

⁸ 11 Del. Code § 470(a).

applying similar pressure through acceleration. There was no reason to believe that Jackson was going to stop accelerating and give up. If Jackson was able to partially push through the open door of the Trooper's pickup truck or tried to reverse his vehicle out of the "pinch", it was reasonable to fear that Moyer, Macauley, or Efelis may have been seriously injured or killed. When the shots were fired, Moyer was on the ground, wedged between Jackson's driver side door and a guardrail, with Efelis and Macauley standing on the hood. Despite having three Troopers on his vehicle, Jackson continued to accelerate, causing his vehicle to lunge forward as he tried to plow through the Troopers' pickup truck.

Under the circumstances at the time, Efelis and Macauley reasonably feared for their safety and the safety of Moyer. Efelis and Macauley's use of deadly force was in response to a perceived threat of imminent serious physical injury or death. It was reasonable to believe that Jackson's actions could have caused death or serious physical injury to Trooper Moyer based on his position between the car and the guardrail. Additionally, it was reasonable to believe that Jackson's continued acceleration could have pushed his car past the pickup truck. If so, there would have been a serious risk that Efelis or Macauley would have been run over and crushed. Under the circumstances, it was reasonable to believe that Jackson was willing to make his escape at all costs, even if it meant running over a Delaware State Trooper. This is best evidenced by the fact that Jackson continuously accelerated his vehicle, causing it to repeatedly lunge forward and plow into the pickup truck – all while three Troopers were on Jackson's car. Also, when Macauley initially saw Cary on the ground injured, he reasonably believed that Cary may have been stuck by Jackson's fleeing vehicle. For these reasons, the use of deadly force by Efelis and Macauley was justified in defense of themselves and others. Further, the Troopers were not reckless nor negligent in having such beliefs, nor in acquiring or failing to acquire any knowledge or belief, which would have been material to the justifiability of the use of force.

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 motivating factor. Jackson is a Black male. Efelis is a white male. Macauley is a white male. Race was not a relevant or motivating factor in the use of force.⁹ The relevant and motivating factors in Efelis' and Macauley's use of force were the reasonable belief that force was necessary due to the imminent danger and substantial risk of death or serious injury that Jackson posed to Trooper Moyer and themselves.

Upon careful consideration of the available evidence, the Troopers Efelis and Macauley reasonably believed that the use of deadly force against Jackson was immediately necessary for protecting another police officer and themselves. 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.

⁹ 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).