

Final Report of the Delaware Department of Justice

Use Of Deadly Force by the New Castle County Police Department

Subject: Matthew Beblo

NCCPD Officer: Cody Durham

Date of Incident: 9/21/2023

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 Patrolman Cody Durham of the New Castle County Police Department against Matthew Beblo ("Beblo"). 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."ⁱ Independent of any administrative or criminal investigation conducted by any law enforcement agency, DCRPT investigators and attorneys reviewed evidence consisting of video footage, victim and witness interviews, police interviews, scene photos, forensic evidence, 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, enforce, or evaluate 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 determining whether an officer's actions were consistent with such guidelines in each case. This report expresses no opinion regarding whether the involved officer's actions complied with the agencies internal policies concerning the proper use of deadly force

Facts

On September 21, 2023, Matthew Beblo shot his estranged wife Petya Novakova ("Novakova") and her boyfriend Joseph Tilghman at Beblo and Novakova's shared home, 16 Leader Drive, Newark, Delaware. Novakova was shot and killed by Beblo. Tilghman was shot and fled to another room inside the residence and called 9-11. Tilghman told the 9-11 call taker that he had been shot in the leg, that his girlfriend, Novakova, had been shot, and that the shooter, Beblo, was still inside the residence at 16 Leader Drive.

New Castle County Police Department ("NCCPD") officers were dispatched to 16 Leader Drive for a shooting in progress.ⁱⁱ Patrolman Cody Durham was one of the first responding officers. Patrolman Durham, along with other officers, cautiously approached the home to gather more information. Officers gave several loud commands for all occupants to exit the residence, however no one did. Patrolman Durham checked the front of the residence, focusing on a bedroom window located on the lower level of the home. Patrolman Durham moved toward the window, carrying a ballistic shield for cover. Patrolman Durham was within a few feet of the window when he observed Beblo peek through the drawn blinds holding what appeared to be a handgun. Patrolman Durham alerted other officers that there was an individual in the bottom bedroom. Beblo then fired a single shot at Patrolman Durham. The shot shattered the bedroom window but missed Patrolman Durham. Patrolman Durham immediately returned fire while

simultaneously retreating. Patrolman Durham discharged a total of five rounds in the span of 1.3 seconds, striking Beblo in the arm and torso. Beblo retreated to a closet inside the house where he committed suicide by shooting himself in the head. An independent review of the evidence in this case substantiates the facts set forth above.

Evidence

DCRPT investigators and attorneys reviewed evidence consisting of video footage, victim and witness interviews, police interviews, scene photos, forensic evidence, ballistic evidence and medical records.

NCCPD evidence technicians recovered ballistic evidence from the exterior and interior of 16 Leader Drive. Additionally, investigators collected Patrolman Durham's firearm and Beblo's firearm which was found in his hand when his body was recovered from the closet where he committed suicide. Through ballistic testing conducted by the Delaware State Police Forensic Firearm's lab, investigators were able to determine the following. A shell casing from Beblo's firearm was found in the front bedroom consistent with the single shot Beblo fired at Patrolman Durham. There was no exit hole from Beblo's shot, which was consistent with the shot hitting and shattering the basement window. Five shell casings from Patrolman Durham's gun were located in the yard directly outside of the bedroom, and there were five corresponding bullet holes in the side of the house where Patrolman Durham's shots entered.

Patrolman Durham's body worn camera shows him investigating the front bedroom window with a ballistic shield in front of him. Patrolman Durham says he can observe someone in the room. A bang can be heard on the camera and then Patrolman Durham returns fire.

Once officers were able to enter the home at 16 Leader Drive they found Beblo deceased, slumped over in a closet of a room adjacent to the front basement bedroom still holding his firearm. It was apparent that Beblo had suffered several gunshot wounds, including one to the head. The autopsy confirmed that Beblo died from a self-inflicted gunshot wound to the head, and that he sustained gunshot wounds to his right arm and torso. The wounds to the arm and torso were likely the result of shots fired by Patrolman Durham.

Officer Interview

Officer Durham was interviewed. In his interview he said that he observed movement behind the shade in the bottom window of the house. He approached the window thinking Beblo might be attempting to surrender. He said that Beblo pulled the blind back and had something extended from his hand. Officer Durham then heard gunfire, observed a muzzle flash, and observed a projectile pass right by his shield. He said that he was in fear that if he did not shoot

back at the suspect the suspect would either go back upstairs and kill the second victim or enter into a firefight with officers.

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 belief that a conviction can be obtained.ⁱⁱⁱ 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. Further, it must also consider the viability of any defenses to the crime(s) charged, and the likelihood of successfully presenting such defenses. 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." These laws are codified in Title 11 Sections 464, 465, and 467.

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." "[An officer] using protective force may estimate the necessity of such force, under the circumstances that the person believes to exist."^{iv} Title 11 § 464(c) through (e) specifically address 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[.]"^v Subsection 464(e)(2)(C) articulates that law enforcement officers are *not required to retreat, 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 must also consider whether the use of deadly force by the officers was justified under Title 11 § 465 of the Delaware Code, which involves the use of force for the protection of others.^{vi} The same legal principles that apply to self-defense, apply to the defense of others.^{vii} Lastly, Title 11 § 467 sets forth a justification defense specific to the use of force in law enforcement. It allows officers to use force when they reasonably believe that such force is immediately necessary to make an arrest. Subsection (c) of § 467 limits the circumstances under which an officer may use deadly force to make an arrest or apprehend a fleeing suspect. First, the officer may only use deadly force to make an arrest "if all other reasonable means of apprehension have been exhausted."^{viii} Second, the arrest must be for a crime involving physical injury. Third, the use of deadly force must not create a substantial risk of injury to an innocent person. Lastly, the officer "reasonably believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury or will never be captured if apprehension is delayed."^{ix}

Under Delaware law, the objective facts and circumstances must be considered when determining whether the use of force was 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 used deadly force, that such action was necessary to protect themselves or others from death or serious physical injury, or to prevent the flight of a suspect where the officer reasonably believed that there was an imminent and substantial risk that the suspect would cause death or serious physical injury to another person. 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.^x 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.^{xi}

A full review of the case has been completed by the Division of Civil Rights and Public Trust. The review confirmed a thorough investigation has been conducted by NCCPD. Body worn camera evidence confirms that Patrolman Durham resorted to the use of deadly force only after being targeted by gunfire at close range. As applied to the relevant statutes, Patrolman Durham’s use of deadly force was justified for the purpose of self-protection or the protection of others. The determination that deadly force was necessary and proportionate was reasonable considering the totality of the circumstances at the time Patrolman Durham fired his weapon.

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. In this case Patrolman Durham’s race is white and Matthew Beblo’s race was white. Therefore, race was not found to be a relevant or motivating factor.

Upon careful consideration of the available evidence, Patrolman Durham reasonably believed that the use of deadly force against Matthew Beblo was immediately necessary for self-protection and the protection of others. 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.

ⁱ 29 Del. Code § 2553(a)(3)

ⁱⁱ The information dispatched over the radio that there was “a shooting in progress” alerted officers that the shooter was likely still inside the residence.

ⁱⁱⁱ Delaware Department of Justice Criminal Division Policy Manual citing NDAA National Prosecution Standards (2nd Ed. 1991) §§ 43.3; NDAA National Prosecution Standards (4th Ed. 2024, 4-2.2) “While commencing a prosecution is permitted by most ethical standards upon a determination that probable cause exists to believe that a crime has been committed and that the defendant has committed it, the standard prescribes a higher standard for filing a criminal charge. To suggest that the charging standard should be the prosecutor’s reasonable belief that

the charges can be substantiated by admissible evidence at trial is recognition of the powerful effects of the initiation of criminal charges.”

^{iv} 11 Del Code § 464(b); *See* Delaware Superior Court Pattern Jury Instruction 5.11 (2024).

^v 11 Del Code § 464(c)-(e).

^{vi} “(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.”

^{vii} *See* 11 Del. Code § 465

^{viii} 11 Del. Code § 467(C)

^{ix} *Id.*

^x 11 Del. Code § 471(e)(2).

^{xi} 11 Del. Code § 470(a).