FINAL REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

USE OF DEADLY FORCE BY THE UNIVERSITY OF DELAWARE POLICE DEPARTMENT

SUBJECT(s): GERARDO CARBALLO

OFFICER(s) / TROOPER(s): OFFICER VALERIE BATTLES

DATE OF INCIDENT: JANUARY 5, 2025

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 Officer Valerie Battles ("Battles") against Gerardo Carballo ("Carballo"). 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 agency, DCRPT investigators and attorneys reviewed evidence consisting of video footage, dispatch records, subject and witness interviews, police interviews, scene photographs, 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 January 5, 2025, at approximately 4:30 p.m., Newark Police Department received a 911 call from Carballo. During this call, Carballo stated that he was armed with a knife and was going to kill himself. Carballo stated he was parked at the Newark train station in a red Ford Focus. Ofc. Battles heard the dispatch come over the radio. Minutes later Ofc. Battles arrived at the parking lot.

Surveillance shows Ofc. Battles position her vehicle to the rear of Carballo's vehicle, leaving a considerable distance for safety[2], and exit her vehicle. Carballo exited his vehicle with a hatchet type edged weapon and advanced on Ofc Battles at a hurried pace with the weapon in his right hand. Ofc. Battles retreated backwards with her handgun drawn, giving verbal orders for Carballo to remain in his vehicle and to put his knife down. Carballo did not heed the orders and continued advancing on Ofc. Battles. Ofc. Battles shot at Carballo striking him in his torso. With the assistance of other officers arriving on scene, Ofc. Battles then rendered aid to Carballo and secured the weapon.

[1] 29 Del. Code § 2553(a)(3)

[2] Measurements determined that the distance from mid driver door area of Carballo's vehicle to mid driver door area of Officer Battles' vehicle was over 47'

PHYSICAL EVIDENCE

The physical evidence reviewed in this case included body camera footage, surveillance footage, forensic processing of the scene, Carballo's medical treatment records, and ballistic analysis.

OFFICER INTERVIEWS

Ofc. Battles was interviewed. During her interview she explained that after hearing the radio call related to a suicidal person with a knife she went to provide assistance. (Ofc. Battles is a trained negotiator.) Ofc. Battles said that she positioned her car "a couple of car lengths" from the rear of Carballo's vehicle because there was a weapon involved. Ofc. Battles exited her vehicle and then observed Carballo exit the driver's side door of his vehicle. Carballo began running towards Ofc. Battles with what she recognized as a black knife in his hand. Ofc. Battles drew her handgun, pointed it at Carballo, and issued verbal commands for him to drop the knife. Carballo ignored the commands and continued to advance on Ofc. Battles. Ofc. Battles then fired what she believed were three or four shots from her handgun. When asked, Ofc. Battles said that she used deadly force because Carballo was running at her with a knife, refusing to obey verbal commands, and that he would have killed her had he reached her.

Other officers interviewed included Ofc. Cook of Newark Police Department, Cpl. Young of Newark Police Department, Sgt. Maiura of Newark Police Department, and Officer Cordivano of University of Delaware Police Department. The statements provided either confirmed the statements made by Ofc. Battles, or had no impact on the review of Ofc. Battles' conduct.

CARBALLO INTERVIEW

Carballo was interviewed in the hospital. Carballo stated that he had planned to commit suicide by cutting his throat. He ended up at the train station because his vehicle ran out of gas. He called the suicide prevention hotline but they were of no help. He then called 911 and told the operator he wanted to kill himself. When the officer arrived on scene he stated that his "fight or flight" kicked in and he decided to run at the officer with a knife so that he would be killed.

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.[3] 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."[4] 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[.]"[5] 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.[6] The same legal principles that apply to self-defense, apply to the defense of others.[7] 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

[3] 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."

[4] 11 Del Code § 464(b); *See* Delaware Superior Court Pattern Jury Instruction 5.11 (2024).

[5] 11 Del Code § 464(c)-(e).

[6] "(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."

[7] See 11 Del. Code § 465

force to make an arrest "if all other reasonable means of apprehension have been exhausted."[8] 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."[9]

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.[10] 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]

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.

Upon careful consideration of the available evidence, Ofc. Battles reasonably believed that the use of deadly force against Carballo was immediately necessary for self-protection from death or serious physical injury. As a result, the Department of Justice concludes the use of deadly force in this case does not constitute a crime under the laws of the State of Delaware.

In this case Ofc. Battles is white. Carballo is Hispanic. Race was not a relevant or motivating factor in this incident.

[8] 11 Del. Code § 467(C)
[9] *Id.*
[10] 11 Del. Code § 471(e)(2).
[11] 11 Del. Code § 470(a).