FINAL REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

USE OF DEADLY FORCE BY THE DELAWARE STATE POLICE

SUBJECT(s): Francisco Vazquez-Acevedo

OFFICER(s) / TROOPER(s): Joshua Cary, Herney Tovar, Michael Efelis

DATE OF INCIDENT: 8/4/2024

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 the Delaware State Police against Francisco Vazquez-Acevedo ("Vazquez"). 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, 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 the morning of August 4, 2024, Vazquez went to his ex-wife's home and attempted to kill his ex-wife's son-in-law, Sadiel Familia, by shooting at him. Vazquez then shot and killed his ex-wife's daughter Alondra Figueroa. Familia escaped. Vazquez then poured gasoline throughout the house and attempted to burn it down.

Vazquez fled. After he left, Vazquez posted videos and messages on What's App including threats to his ex-wife's family, friends, and church congregation.

Vazquez's cell phone was tracked. He was located on an electrical tower, twenty-five feet above the ground in the area of Chesapeake City Road, in Newark, with a rope tied around his neck. The Delaware State Police ("DSP") Conflict Management Team and Special Operations Response Team attempted to negotiate his peaceful surrender. Vazquez repeatedly held a handgun to his head and claimed he was heavily armed with grenades. Vazquez fired his handgun multiple times at a DSP helicopter that was monitoring the scene.

At 6:17 p.m. Vazquez fired his weapon in the air and then suddenly turned towards a SORT Bearcat Armored Vehicle that DSP Cpl. Tovar-Quintero ("Tovar") was positioned on top of

[1] 29 Del. Code § 2553(a)(3)

for his sniper assignment. Cpl. Tovar then fired one round from his sniper rifle, aiming at Vazquez's chest.

DSP Corporal/1 Joshua Cary ("Cary") was also positioned at the SORT Bearcat Armored Vehicle. He also fired his rifle three times when Vazquez turned toward the Bearcat with a gun in his hand.

DSP Corporal Michael Efelis ("Efelis") was positioned in a wooded area approximately fifty yards east of Vazquez. When shooting began, Cpl. Efelis fired his rifle at Vazquez.

PHYSICAL EVIDENCE

The physical evidence was reviewed. It included photographs of the scene, ballistic evidence, screenshots from the threatening videos Vazquez posted online, the autopsy, six expended shell casings from Vazquez's handgun, the recovered handgun, police reports, and shell casings from the officers' weapons. None of the physical evidence cast doubt on the officer's statements. No body worn camera of the incident exists.

TROOPER INTERVIEW(S)

Each of the officers was interviewed.

Cpl. Tovar said he fired because he was in fear of Vazquez firing his handgun in the direction of the Bearcat as he turned toward the vehicle after having just shot the handgun in the air. Cpl. Tovar described the movement as a violent turn in the direction of the vehicle.

Cpl/1 Cary said that he decided to fire at that moment because he believed Vazquez was about to direct fire in the direction of the bearcat and the SORT members in and around the vehicle.

Cpl. Efelis said that when he heard gunfire he believed, based on the location and sound, that it originated from Vazquez. He said he believed that Vazquez was firing, either at the officers to his right, or at his group.

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

[2] 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."

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

[4] 11 Del Code § 464(c)-(e).

[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

force to make an arrest "if all other reasonable means of apprehension have been exhausted."[7] 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."[8]

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.[9] 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.[10]

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. In this case Cpl/1 Cary is white, Cpl. Tovar is Hispanic, and Cpl. Efelis is white. Vazquez was Hispanic. There is no indication that race was relevant or a motivating factor in this case.

Upon careful consideration of the available evidence, Troopers Cary, Tovar, and Efelis reasonably believed that the use of deadly force against Vazquez, who had earlier that day had killed one person and attempted to kill another, was immediately necessary for both 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.

[7] 11 Del. Code § 467(C)
[8] *Id.*
[9] 11 Del. Code § 471(e)(2).
[10] 11 Del. Code § 470(a).