FINAL REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

USE OF DEADLY FORCE BY THE WILMINGTON POLICE DEPARTMENT

SUBJECT(s): CALVIN WARREN

OFFICER(s) / TROOPER(s): LT. RANDOLPH PFAFF

DATE OF INCIDENT: JANUARY 28, 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 the Wilmington Police Department against Calvin Warren ("Warren"). 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 surveillance video, body worn camera video, officer interviews, civilian interviews, and an interview of Warren.

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 28th, 2025, members of the Wilmington Police Drug, Organized Crime and Vice Division ("DOCV") were surveilling the area of Kirkwood Street in Wilmington to address drug related and quality of life issues. They observed a parked vehicle enter traffic, drive one block while committing multiple traffic violations, and then park. Just before 1 p.m., members of the unit approached the vehicle. Approaching officers noticed the driver, later learned to be Warren, reaching down inside the vehicle. Shortly thereafter, before officers could speak to Warren, he pulled away, entering the sidewalk and driving down the sidewalk. Warren repeatedly collided with parked vehicles and the front steps of homes on the sidewalk, nearly striking two women who had been on the sidewalk and had to jump out of the way. During this time Lt. Pfaff was running down the street parallel to the vehicle with his weapon drawn and pointing at the vehicle repeatedly ordering Warren to stop.

The vehicle reached the end of the sidewalk and re-entered the street at an intersection, oriented towards two people standing on the opposite side of the street and towards a one-way street with a flow of traffic against the vehicle's path of travel.

[1] 29 Del. Code § 2553(a)(3)

As the vehicle entered the street, Lt. Pfaff shot one round through the front passenger window which struck Warren's head. The wound was a graze wound and not life threatening. While the vehicle was still moving Warren exited, fell to the ground, and was taken into custody. The vehicle then coasted and struck a parked car on the other side of the street.

PHYSICAL EVIDENCE

The physical evidence in this case was reviewed by DCRPT. It consisted of: surveillance video from Sacred Heart Church which gave a partial view of the events; body worn camera video from Lt. Pfaff; and body worn camera from other officers on scene. DCRPT's assigned investigator went to the scene to observe the investigation shortly after the shooting.

LIEUTENANT PFAFF INTERVIEW

Lt. Pfaff was interviewed on February 5, 2025. Pfaff has been employed by WPD for 28 years and is currently a Lieutenant with the Drug, Organized Crime, and Vice (DOCV) Division. Pfaff has been a lieutenant in that unit since September of 2018. Pfaff said he primarily wears street clothes at work. On the date of this incident Pfaff was wearing a black, long sleeve shirt with "police" in white lettering on both arms as well as a black tactical vest marked "police" on the front and back.

Pfaff said that on January 28th members of DOCV were monitoring the 800-900 block of Kirkwood Street in Wilmington, an area where there had been drug related complaints. Members of DOCV observed a blue Hyundai in the 800 block with one occupant. The vehicle pulled out without using a turn signal, drove one block, and then parked again without using a turn signal. A member of DOCV then observed the occupant of the vehicle, later learned to be Warren, bending over towards the passenger seat. At this point the vehicle and occupant had been in the area for an hour. Pfaff decided to stop the vehicle for traffic infractions.

DOCV initiated a traffic stop with two vehicles, one stopped ahead of the Hyundai and one stopped behind the Hyundai. As Pfaff exited the vehicle he heard an engine rev and then saw the Hyundai turn 90 degrees, drive towards him, cross the street, and get up on the curb. Pfaff said he observed the vehicle then drive along the sidewalk, between parked cars and houses, striking objects and nearly running over two women who had to retreat up their steps.

Pfaff said that, perceiving the Hyundai to be a serious threat to both himself and the women, he pulled out his gun and began ordering the driver to stop. The car proceeded up the

sidewalk and into the intersection, pointed towards a one-way street (with the flow of traffic towards the vehicle). Pfaff said at this time, thinking that there was a high likelihood the driver was going to kill someone, he discharged one round. The driver, Warren, immediately exited the vehicle and was detained. During his interview Pfaff said that his decision to fire was based upon the vehicle making a hard right into the intersection towards him, towards a one-way street, and that he could see out of the corner of his eye an individual in the car's path of travel on the other side of the street.

OTHER INTERVIEWS

Both of the women in the path of travel of the vehicle were interviewed. Both stated that they felt they would have been hit by the Hyundai had they not moved out of the way up onto the steps of the house.

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.

[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."

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 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

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[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

[7] 11 Del. Code § 467(C)

[8] *Id.*

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. Pfaff is white. Warren is Black. There is no indication that race was a relevant motivating factor in this matter.

Upon careful consideration of the available evidence, Pfaff reasonably believed at the time he discharged his firearm that the use of deadly force against Warren 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 crime under the laws of the State of Delaware.

[9] 11 Del. Code § 471(e)(2).
[10] 11 Del. Code § 470(a).