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JOSEPH R. BIDEN, III
ATTORNEY GENERAL

March 16, 2011

Colonel Robert M. Coupe
Superintendent
Delaware State Police
P. O. Box 430
Dover, DE 19903

RE: Use of Deadly Force – SORT/DSP3 Officers Jeffrey Ballinger, Ricardo Torres,
John Dudzinski

Dear Colonel Coupe:

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Officers Jeffrey Ballinger, Ricardo Torres and John Dudzinski on June 15, 2010. As a result, the officers' use of deadly force was deemed justifiable and is not subject to criminal prosecution under Delaware law.

Thank you and your command for your cooperation and assistance in this matter. Please contact me if you have any questions.

Sincerely,


Timothy P. Mullaney, Sr.
Deputy Attorney General

TPM/mam
Enclosure

**REPORT OF THE DEPARTMENT OF JUSTICE
DELAWARE STATE POLICE USE OF DEADLY FORCE**

SUBJECTS: Deandrae Thomas and Neal Barnes

OFFICERS: Jeffrey Ballinger, Ricardo Torres and John Dudzinski

June 15, 2010

By: Timothy P. Mullaney Sr. 
Deputy Attorney General

Date: March 3, 2011

Scope of the Investigation

This is the final report of the Delaware Department of Justice in the investigation of Officers Jeffrey Ballinger (Ballinger), Ricardo Torres (Torres) and John Dudzinski's (Dudzinski) of the Delaware State Police use of deadly force against Deandrae Thomas (Thomas) and Neal Barnes (Barnes). Special Investigator Thomas Penoza, Director of the Special Investigations Unit, conducted the investigation. Deputy Attorney General Timothy P. Mullaney Sr. supervised the investigation and review of the use of force for the Department of Justice. Statements were taken from both police officers and civilian witnesses who were at the scene. Investigators examined the actual crime scene and also reviewed evidence, reports written by officers who responded to the scene, and witness interviews. An interview with Thomas and Barnes was also conducted by Special Investigator Penoza.

Purpose of the Department of Justice Report

The Department of Justice's investigation of law enforcement officer shootings serves a specific but limited purpose. The Department determines whether a law enforcement officer's use of deadly force constitutes a criminal act. The Department does not 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 a given case.

This report expresses no opinion whether the officers' actions complied with the departmental policies or procedures concerning the use of force set by the Delaware State Police (DSP) or whether, with the benefit of hindsight, the officers could have proceeded differently. This is a matter of a separate internal investigation to be undertaken by the Delaware State Police. The only purpose of the Department of Justice's investigation of this shooting is to determine whether the officers committed a crime when they used deadly force against Thomas and Barnes. One of the issues that must be considered in any intentional shooting is whether the use of deadly force by a law enforcement officer was justified under all of the circumstances.

The Facts

On June 15, 2010 officers from the Delaware State Police (DSP) Troop 3 Drug Unit and the Special Operations Response Team (SORT) were conducting an operation serving arrest and search warrants at various Kent County locations. At approximately 1600 hours they received information that Deandrae Thomas (Thomas), one of the suspects they were looking for, was going to 139 Barney Jenkins Road in a gold Chevrolet Impala. Thomas was wanted on multiple felony warrants and he was known

to be armed. Thomas had recently bragged about being involved in two drive by shootings and that he kept guns at the 139 Barney Jenkins Road location.

On June 15, 2010 at approximately 1615 hours, DSP officers arrived at 139 Barney Jenkins Road and observed the suspect vehicle, occupied by two black males, later identified as Thomas and Neal Barnes (Barnes), in the turnaround area of the driveway in front of the residence. The suspect vehicle was facing the driveway. DSP officers pulled into the driveway and stopped in front of the suspect vehicle to block it in. As Corporal Jeffery Ballinger (Ballinger) and Corporal Ricardo Torres (Torres) were exiting their vehicle, Thomas accelerated his vehicle and ran into the driver's side of the unmarked DSP vehicle. Ballinger was wearing a vest that was clearly marked in large letters, "State Police" and was yelling "State Police", as he exited the unmarked DSP vehicle. Torres was wearing a vest marked "Trooper" and "Police" in large letters. Ballinger had to retreat back into his vehicle and fired one round at Thomas' vehicle as it accelerated towards him because Ballinger thought he was going to be killed by Thomas' vehicle. When Thomas' vehicle hit the unmarked DSP vehicle, Ballinger's left foot was caught in the door and was injured. The impact also caused Torres, who was on the other side of the vehicle when it was struck, to be thrown to the ground. Thomas then backed up his vehicle and tried to go around the unmarked DSP vehicle. Another DSP vehicle then pulled up next to the unmarked DSP vehicle that had been struck by Thomas to block his escape. Thomas accelerated around the unmarked DSP vehicle and struck the second DSP vehicle head on. Torres approached Thomas' vehicle and attempted to clear the glass from the driver's side window, which had been struck by Ballinger's earlier shot, but Thomas accelerated backwards hitting Torres' arm and injuring it. During this time period multiple DSP officers, identifiable by clothing, yelled "Police" and "Show your hands".

Detective John Dudzinski (Dudzinski), exited the second DSP vehicle, which had been struck head on by Thomas' vehicle, and approached Thomas' vehicle. Dudzinski was yelling commands to "Show your hands" and "Stop" which was ignored by Thomas. When Thomas started to revving his engine, Dudzinski fired two rounds into the windshield on the driver's side of Thomas' vehicle. Dudzinski stated that he fired at Thomas because he feared for his life and the lives of the other officers at the scene. Thomas then drove backwards at a high rate of speed along the front of the residence but between the residence and the stone driveway sideswiping a tree and nearly hitting two civilians at the front of the residence. Thomas continued on striking a white pickup in the driveway (non police) and backing into a shed at the rear of the property. As troopers approached the vehicle, they were shouting commands for Thomas and his passenger, Barnes, to "Stop" and "Show your hands" and identified themselves as State Police. At first Thomas raised his hands, but then he revved the engine and attempted to put the vehicle back in gear. At this point, Torres fearing for his safety and the safety of others present fired two rounds through the driver's side front window and Dudzinski also fearing for the his safety and the safety of others present fired one round through the windshield on the driver's side.

Thomas and Barnes were finally removed from the vehicle by officers at the scene. Both were then transported to Kent General Hospital and then transferred to Christiana Hospital. Thomas was shot in the lower right portion of his face, right upper chest, right upper arm, and right shoulder. Barnes was shot in the left wrist and the tip of the third finger on his left hand. Torres and Ballinger were also transported to Kent General Hospital where they were treated and released.

CONCLUSION

After a thorough investigation and review of all the statements, reports and other evidence, it is the conclusion of the Office of the Attorney General that as a matter of Delaware Law, Officers Jeffrey Ballinger, Ricardo Torres and John Dudzinski use of deadly force was justified in this case. Section 464 of Title 11 of the Delaware Code generally 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] 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." Additionally, Section 465 of Title 11 of the Delaware Code defines the use of force for the protection of other persons. It proves that, "[t]he use of force upon or toward another person is justifiable to protect a third person when the [officer] would have been justified under § 464 of this title in using such force to protect the [officer] against the injury the [officer] believes to be threatened to the person whom the [officer] seeks to protect." Under Delaware Law, it is Officers Ballinger, Torres and Dudzinski's subjective state of mind which is of critical importance in determining whether their use of force was justifiable. The specific factual issue is whether Officers Ballinger, Torres and Dudzinski actually believed at the time that they intentionally fired their weapons that such action was necessary to protect themselves or others from death or serious physical injury, so long as they were not 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.

At the time that Officers Ballinger, Torres and Dudzinski fired their weapons, they believed that Deandrae Thomas in the reckless manner in which he was operating his vehicle posed a threat of death or serious physical injury to themselves and other persons present at the scene. Officers had an arrest warrant and were attempting that arrest at the time of the incident. Ballinger and Torres were wearing clothing that clearly identified them as members of the State Police and Ballinger had verbally identified themselves as state police. Thomas deliberately drove his vehicle at these officers, as they were exiting their vehicle, injuring both officers and placing them in fear for their lives. Ballinger fired one round as he was retreating from Thomas' vehicle. Thomas continued to drive recklessly in trying to escape and in the process drove into a police vehicle and towards several officers and civilians at the scene. Torres again tried to get Thomas to stop and reached into the vehicle but Thomas accelerated backwards injuring Torres' arm. Thomas continued in reverse and crashed into a shed totally destroying it. Thomas then attempted to place the vehicle in drive to escape from the shed. Thomas was revving the engine but the debris from the shed was holding him in

place at least temporarily. Torres and Dudzinski repeatedly told Thomas to stop to no avail. Torres and Dudzinski fired at Thomas to stop him before he killed or injured someone with his vehicle. Torres and Dudzinski both stated they feared for their lives, as well as others present at the scene. All officers indicated that Thomas appeared to be trying to escape no matter what the outcome of his actions. The investigation of the facts and circumstances support the reasonableness of the officers' beliefs that Thomas' conduct was putting the lives of the officers and civilians at the scene in jeopardy and that this belief was not formed recklessly or negligently. As a result, Officers Ballinger, Torres, and Dudzinski's use of deadly force was justified and not subject to criminal prosecution under Delaware law.