

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

**SUBJECT: James McCardell**

**OFFICER: Tpr. Pierre Lawler**

**DATE OF INCIDENT: December 17, 2015**

**Dated: June 10, 2016**

## **Scope of the Investigation**

This is the final report of the Delaware Department of Justice, Office of Civil Rights and Public Trust, on the investigation of the use of force by a Delaware State Police Trooper Pierre Lawler (“Tpr. Lawler”) against James McCardell (“Mr. McCardell”). Investigators from the Office of Civil Rights and Public Trust examined the crime scene and also reviewed evidence, reports written by officers who responded to the scene and witness interviews. Attorneys with the Office of Civil Rights and Public Trust reviewed the use of force for the Department of Justice.

## **Purpose of the Department of Justice Report**

The Department of Justice 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 officer’s actions complied with departmental policies or procedures concerning the use of force set by the Delaware State Police Department or whether, with the benefit of hindsight, the officer could have proceeded differently.

## **Facts**

On December 17, 2015, at 10:29 P.M. the New Castle County 911 Call Center received a call from an individual reporting a home invasion in progress. The 911 operator dispatched Delaware State Police to respond to the complaint. Tpr. Lawler, on-duty with Delaware State Police Troop 2, responded to the call. He was in uniform, operating a fully marked police car. The operator informed all units responding that the caller reported someone banging on the front door and kicking the window and that the caller was still in the residence. On arrival the Tpr. Lawler observed the door forced open and broken glass on the front step. He exited his patrol car, drew his firearm and approached the residence. He entered the residence through the open door into the kitchen. Inside, he observed a dark room to his left and saw two men and a woman in the living room to his right. One man was standing and the other man and the woman were lying face down. Tpr. Lawler turned toward the living room and took a step or two in that direction. Mr. McCardell then called “hey,” and emerged from the dark room, now behind the Tpr. Lawler. Tpr. Lawler turned to see Mr. McCardell, with a handgun in his right hand and pointed at his head, moving quickly in Tpr. Lawler’s direction. Tpr. Lawler stated in an interview conducted several days after the incident that he believed Mr. McCardell was going to shoot him and that he was in fear for his life. At that point Tpr. Lawler fired one round, striking Mr. McCardell in the abdomen. Tpr. Lawler further stated that as he was about to shoot a second time, Mr. McCardell dropped the firearm and fell to the ground. No longer perceiving a threat, Tpr. Lawler did not shoot again and began issuing verbal commands to Mr. McCardell to move away from the firearm. Tpr. Lawler then confronted the second subject in the living room. The second subject complied with his verbal instructions and laid down on the floor. Tpr. Lawler held the two suspects at gunpoint until other units of the Delaware State Police and New Castle County Police arrived.

The police recovered a Hi-Point 9mm handgun, loaded with 8 rounds, located on the floor where Mr. McCardell fell. Mr. McCardell stated in an interview that he had the handgun when he broke into the house and that he did not put it down while he was in the house. The residents of the home confirmed that McCardell was armed with a handgun when he broke into the home. Mr. McCardell suffered non-fatal injuries to his abdomen. He was taken to Christiana Hospital for treatment and was later released to the Department of Correction. He was charged with a number of criminal offenses in connection with the incident.

### **Conclusion**

After a thorough investigation and review of all statements and reports, it is the conclusion of the Department of Justice that, as a matter of Delaware law, the use of force by the Delaware State Police Department Trooper was not a criminal act because the use of such force was justified. 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 provides 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 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 the officer’s subjective state of mind that is of critical importance in determining whether his use of force was justifiable. The specific factual issue is whether the officer actually believed at the time that he intentionally fired his weapon that such action was necessary to protect himself or others from death or serious physical injury, so long as the officer was 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.

Tpr. Lawler was confronted with a subject moving quickly in his direction pointing a handgun at his head at the scene of an in-progress home invasion. He fired his handgun with the intention of eliminating the threat presented and when that application of force was effective, he ceased his use of force.

The investigation of the facts and circumstances fully support the reasonableness of Tpr. Lawler’s belief that his life was in danger. That belief was not formed recklessly or negligently. As a result, the use of deadly force by the Trooper was justified and is not subject to criminal prosecution.