

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

SUBJECT: ROBERT A. KNOX

OFFICERS: CORPORAL CALLAWAY AND CORPORAL JACKSON

DATE OF INCIDENT: AUGUST 28, 2018

Dated: March 29, 2019

Scope of the Investigation

This is the final report of the Delaware Department of Justice, Office of Civil Rights and Public Trust, arising out of the investigation of the use of deadly force by Corporal Sean Callaway (referred to hereinafter as “Corporal Callaway”) and Corporal Patrick Jackson (referred to hereinafter as “Corporal Jackson”) against Robert Knox (referred to hereinafter as “Mr. Knox”). The Office of Civil Rights and Public Trust reviewed evidence, interviews of civilian witnesses, interviews of police witnesses, scene photos, police reports, the autopsy, medical records, and the ballistics report. Attorneys with the Office of Civil Rights and Public Trust reviewed this use of force incident 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 of Justice 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 involved officer’s actions complied with departmental policies or procedures.

Facts

The Delaware State Police sought and obtained a search warrant for a residence in Harbeson, Delaware, after identifying probable cause to the Superior Court of Delaware, supporting the search and seizure of evidence related to drug dealing. The search warrant described the target of the warrant, Mr. Knox, and noted he was wheelchair-bound.¹ On the morning of August 28, 2018, officers assembled to execute those warrants. The police entered the home at 6:07 a.m. The Special Operations Response Team (hereinafter referred to as “SORT”) made the initial entry into the home. SORT deemed the residence clear at 6:20 a.m.

Police Witnesses:

Corporal Carey Brower is the Assistant Commander of SORT and was interviewed in connection with this investigation. Brower stated that SORT is present for entry on search warrants and pats down the individuals present, but does not conduct a full search. SORT officers search for people and threats only. Thereafter, the residence is turned over to investigative units, familiar with the case, to complete the search and continue the investigation. Corporal Brower stated that decisions to handcuff occupants during the execution of a search warrant are made on a case by case basis.

In this case, flex cuffs, which are made of plastic instead of metal, were utilized on two occupants of the home. Mr. Knox was in a medical bed in the living room. In a separate room, two of Mr. Knox’s relatives were seated at the dining room table in flex cuffs. Mr. Knox was not placed in handcuffs or flex cuffs.

Corporal Thad Boyce was present in his capacity as a SORT officer. He was aware that Mr. Knox was paralyzed. Corporal Boyce heard Mr. Knox continually say “I can’t do this.” He also heard Mr. Knox specifically address Witness 1 and say he “can’t do this.” Corporal Boyce

¹ Mr. Knox suffered injuries as a result of a car accident in 2013 and has since suffered paraplegia.

heard Witness 1 respond, "can't do what Bobby?" Corporal Boyce advised he heard Mr. Knox respond, "can't go back to jail."

Corporal Boyce later advised he was concerned about this statement. Nevertheless, he did not place Mr. Knox in handcuffs due to his medical condition and his compliance with officers. However, Corporal Boyce did search the bed and right side area of Mr. Knox, including under the covers.

Detective Dallas Reynolds is a member of the drug unit and was present in the room as SORT officers transitioned the residence to the investigative unit. Detective Reynolds was physically located by the front door and was aware the Detective Abbott was talking to Mr. Knox. Detective Reynolds then saw Corporal Blakeman walk toward Mr. Knox's bed. Detective Reynolds heard a gunshot, and turned as he drew his departmentally-issued firearm. He heard both Corporal Jackson and Corporal Callaway state, "drop the gun." Detective Reynolds told investigators that he saw a black handgun in Mr. Knox's right hand. After Mr. Knox was shot, Detective Reynolds applied pressure to Mr. Knox's bullet wounds.

Detective Lance Abbott was also interviewed in connection with this investigation and stated that Mr. Knox appeared defeated and made statements to the effect of, "I don't want to go to jail," and "I'm gonna die in jail." As Detective Abbott turned to leave, he heard someone shout, "gun!" He also heard someone say, "Bobby, put the gun down."

Detective Tom Gallagher was standing with Witness 1 and Witness 2 and heard yelling and commotion. He saw Detective Jackson backing up. Then he saw a small gun in the left hand of Mr. Knox, as he was trying to sit up. At that moment, the gun was pointed at the ceiling. Detective Gallagher felt he did not have a clear shot. He returned his attention to Witness 1 and Witness 2, and searched them for weapons.

Corporal Matthew Blakeman is a member of the Proactive Criminal Enforcement Unit and was present at the residence to transport individuals and provide assistance. Corporal Blakeman was told the residence was clear, so he went inside. He was specifically tasked with observing Mr. Knox, and stood to Mr. Knox's right side. According to Corporal Blakeman, Mr. Knox was lying in bed, primarily undressed and wearing circulation boots, and not handcuffed. Corporal Blakeman noted some medical items on the left side of Mr. Knox. Corporal Blakeman described observing Corporal Callaway asking Mr. Knox what he needed in order to be transported from the residence. Corporal Blakeman explained to investigators the plan was to get Mr. Knox dressed and out of the home. Mr. Knox had his hands on the rails of the medical bed.

According to Corporal Blakeman, as Corporal Callaway began to remove Mr. Knox's circulation boots, a phone rang. Mr. Knox started to lean up and was eventually propped up on his elbows. Corporal Blakeman stated Mr. Knox reached over to the left and came up with a gun. Corporal Blakeman stated, "I thought he was going for the phone and before he came back up, it was a gun."

Corporal Blakeman went on to describe someone yelling, "Gun!" He was unsure if he also yelled. Corporal Blakeman described seeing the gun as it was coming across Mr. Knox's body towards Corporal Callaway, and Mr. Knox had the gun in one hand. Corporal Blakeman leaned

over the medical rail and onto Mr. Knox, in an attempt to grab his hands. Corporal Blakeman heard 1-2 shots. After the second shot, he threw Mr. Knox's arm and dove for the floor.

Corporal Sean Callaway's Statement:

Corporal Sean Callaway is both a member of SORT and a detective, assigned to investigate the underlying case which brought the Delaware State Police to the home on Harbeson Avenue that morning. As Corporal Callaway entered the home, Mr. Knox was sitting straight up, with his hands on the rails of the bed. After the residence was cleared by SORT, the officers began to change over to the drug investigators. Corporal Blakeman entered and Corporal Callaway asked him to relieve another officer, who had been watching Mr. Knox. Corporal Callaway noted Mr. Knox's bed had a railing with side tables to the left and right, and a privacy sheet hung near the foot of the bed. Corporal Callaway overheard Mr. Knox state he was "not going back to jail," more than once. In Corporal Callaway's experience as a drug officer, he interpreted this to mean that Mr. Knox would cooperate with investigators and supply information helpful in other drug investigations.

Corporal Callaway went outside to remove his gear associated with the search warrant. As he re-entered the home, Detective Abbott passed Corporal Callaway and advised him Mr. Knox stated he did not want to talk anymore, and he again repeated he was not going back to jail. Corporal Callaway re-entered the home and approached Mr. Knox by telling him they were going to try to get him out of bed. According to Corporal Callaway, Mr. Knox was not handcuffed due to his handicap and because they would have needed to remove handcuffs to assist him out of bed.

Mr. Knox advised Corporal Callaway he needed to remove his circulation boots. Mr. Knox sat up, and used the rails to pull himself up. As Mr. Knox moved, a phone rang. Mr. Knox lunged toward the phone with a big exhale, and his right hand reached across to the side table on his left. Corporal Callaway then saw a gun come up. Corporal Callaway recalled drawing his weapon as Corporal Blakeman tried to grab Mr. Knox's arms, but did not see Corporal Blakeman's hands near the gun.

Corporal Callaway stated, as Mr. Knox struggled with Corporal Blakeman to keep the gun up, Corporal Callaway moved aside a privacy sheet and saw the barrel of the gun pointed directly at him. Corporal Callaway stated that it appeared to him that Mr. Knox had full control of the gun and Corporal Blakeman did not have control of the gun. At that point, Corporal Callaway aimed for the abdomen of Mr. Knox and fired. Corporal Callaway stated that he observed Corporal Jackson also advance and shoot Mr. Knox. According to Corporal Callaway, the gun fell from Mr. Knox's hand onto the right nightstand. Mr. Knox remained in his position for a few seconds, then leaned back and officers started to perform aid.

Corporal Patrick Jackson's Statement:

Corporal Patrick Jackson was present in the room as SORT was leaving the residence, he assisted Witness 1 with getting his clothes. In his statement to investigators, Corporal Jackson said that Mr. Knox was in bed to his left. He heard Mr. Knox say he "couldn't do jail again."

Corporal Jackson heard someone yell, “gun!” This caught his attention and he looked up and saw Corporal Blakeman leaning over the bed. Corporal Jackson next heard a gunshot go off, it sounded to him as though the shot came from the direction that Corporal Callaway had been standing. It appeared to Corporal Jackson that Corporal Blakeman then tried to get away from Mr. Knox.

According to Corporal Jackson’s statement, Mr. Knox was sitting up after the gunshot from Corporal Callaway’s weapon. Additionally, Corporal Jackson saw Mr. Knox still had his arms outstretched toward Corporal Callaway, with a black handgun still in his hand. Corporal Jackson said that Mr. Knox appeared to be looking at Corporal Callaway. Corporal Jackson described registering these facts as a lethal threat; later clarifying he deemed the actions of Mr. Knox as a threat to Corporal Callaway, Corporal Blakeman and his own life. He unholstered and fired his department-issued firearm several times,² until Mr. Knox dropped the pistol. Corporal Jackson then provided cover as Corporal Callaway approached to get control of Mr. Knox’s hands.

Civilian Witnesses

Witness 1 is a relative of Mr. Knox, and was home that morning. Witness 1 was interviewed in connection with this investigation. Witness 1 was sleeping as the police entered the home; it sounded to him as though someone was breaking into the home. He then realized it was the police. Witness 1 was placed in flex cuffs, along with Witness 2, in the dining room. Both were seated in a chair. Witness 1 could not see Mr. Knox. Witness 1 heard Mr. Knox say, “man, I can’t take this.”³ Witness 1 told investigators he asked Mr. Knox what he meant, but did not receive an answer. While Witness 1 denied owning any guns, he was unsure if there were any guns in the home. Witness 1 advised Mr. Knox was paralyzed when he lost control of his car. The accident took place just three months after Mr. Knox had been released from a ten-year period of incarceration.

Another relative, Witness 2, was staying as a guest in the home. Witness 2 described Mr. Knox as paralyzed from the waist down. Witness 2 explained that Mr. Knox had friends who would frequently pick him up and he was able to get around. Witness 2 went on to state Mr. Knox spent some time on strength training his upper body with a trainer. On the morning in question, Witness 2 heard banging on the door and sat up. The door burst open. Witness 2 fell on the floor and stated he complied with the instructions of police. Witness 2 was placed in flex cuffs and seated at the same table as Witness 1. Witness 2 could not see Mr. Knox because his back was to him. Witness 2 stated that Mr. Knox’s mother called at 4:57 a.m. to check on him. Witness 2 heard Mr. Knox say, “I can’t do this,” though he was unsure what Mr. Knox meant.

² He was later asked how many times and stated he fired three times. Ballistics evidence reveals he fired four times.

³ As Witness 1 sat with the family of Mr. Knox, he provided a different version of events—specifically that Mr. Knox did not say a word. This is inconsistent with the official statement supplied to investigators in this matter. While this is troubling, the other civilian and police witnesses each advised investigators that Mr. Knox expressed, in some manner that he could not go back to jail. As it is consistent with other witnesses and his initial statement, this office has determined the official statement given by Witness 1 is credible.

Witness 2 heard Witness 1 respond to Mr. Knox by asking, “what are you talking about?” Witness 2 stated that Witness 1 was crying before the shooting. Witness 2 felt ten to fifteen minutes passed before he heard voices shouting, “show me your hands,” as well as some reference to a gun “on the left.” Witness 2 owns a firearm, but kept it in a separate bedroom.

Physical Evidence

A total of four guns were located within the home on Harbeson Road by the Delaware State Police. Those include:

- 9mm Smith & Wesson handgun located in the front left bedroom, in a red bag.
- .38 caliber revolver, located under a brown recliner, placed to the left of Robert Knox’s bed.
- 9 mm Ruger handgun in a box.
- A Lorcin L22 was located on the side table to the left of Mr. Knox’ medical bed.

The Lorcin L22 is the weapon that Mr. Knox reached toward, just prior to the shooting. This firearm was purchased by an individual affiliated with Mr. Knox’s family. Four cell phones were located on the two side tables by Mr. Knox’s bed. Delaware State Police also recovered powder cocaine, crack cocaine, methamphetamines, alprazolam pills, oxycodone pills and hydromorphone— in quantities suggestive of serious legal penalties under Delaware law for Mr. Knox if these items could be linked to him at trial.⁴

The autopsy revealed that Mr. Knox was struck by five bullets. One bullet struck his abdomen and the other four struck Mr. Knox’s right side. The witnesses suggest Mr. Knox was leaned to the toward the left side table, as such, these wounds are consistent. Five bullets were removed from Mr. Knox’s body and taken to the Forensic Firearms Lab for comparison. One bullet was missing from Corporal Callaway’s weapon and four bullets were missing from Corporal Jackson’s weapon. Four of the bullets retrieved from Mr. Knox matched the departmentally-issued weapon assigned to Corporal Jackson and one bullet matched the departmentally-issued weapon assigned to Corporal Callaway.

Conclusion

The State must determine if the use of deadly force against Mr. Knox is a criminal act. Title 11 Section 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] 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.”

Under Delaware law, the subjective state of mind of any person, in this case the law-enforcement officers, is the legal test to in determine whether the use of force was legally

⁴ During his prior arrest, for which he had served a jail sentence, Mr. Knox was also charged with driving a vehicle at Delaware State Police officers to evade arrest. As part of his plea agreement in that case, Mr. Knox pled guilty to reckless endangering. This incident pre-dated his car accident, which led to partial paralysis.

justifiable against another person. The specific factual inquiry is two-pronged. The first question is whether each officer actually believed, at the time he intentionally fired his weapon, that such action was necessary to protect himself or others from death or serious physical injury. The second question is whether each 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 *Del. C.* § 470(a).

The facts known to Corporal Callaway at the time he fired include that Mr. Knox was paralyzed, but mobile from the waist-up. Corporal Callaway knew that Mr. Knox made statements about not going back to jail. In the moments prior to the shooting, Corporal Callaway suspected this might mean Mr. Knox would provide information on other crimes. The statements of the officers in the room suggest they were concerned with physically assisting Mr. Knox out of bed. A phone rang, and Mr. Knox lunged toward the table with the ringing phone. Instead of a phone in his hands, he came up with a gun. These events suggest that Corporal Callaway was caught off guard by the presence of the firearm in Mr. Knox's possession.

Corporal Callaway, Corporal Blakeman and Corporal Jackson each described the gun in Mr. Knox's left hand as pointing at Corporal Callaway prior to the first (and only) shot being fired by Corporal Callaway. Mr. Knox's statements about not wanting to go back to jail were heard by both civilian witnesses in the home. A significant piece of corroborating evidence came from Witness 2, who heard voices shouting, "show me your hands," prior to the shooting. Witness 2 also described hearing voices shouting about a gun "on the left." The evidence leads this office to conclude that at the time he fired his weapon, Corporal Callaway believed he needed to fire his weapon to protect his own life.

The second portion of the inquiry regarding the actions of Corporal Callaway requires a legal assessment as to whether he was reckless or negligent in forming such belief. This office determines that he was not. Corporal Callaway saw the gun in Mr. Knox's hands. While there is no body camera footage to indicate how long this interaction took, the evidence is that Corporal Blakeman had some time to lean over the bed and attempt to grab the gun from Mr. Knox. Corporal Callaway described being aware that Corporal Blakeman was unable to gain control of Mr. Knox's gun. Corporal Callaway's actions in assessing the situation were not legally reckless or negligent at the time he fired his weapon. The statements from witnesses suggest the Delaware State Police felt Mr. Knox was being compliant and did not need to be handcuffed and the situation escalated rapidly. Corporal Callaway was not negligent or reckless in his assessment of the need to use deadly force.

As for the actions of Corporal Patrick Jackson, he was also aware the Mr. Knox felt he "couldn't do jail again." He heard someone yell that there was a gun. By the time he looked over, Corporal Blakeman was leaning on the bed. Corporal Jackson saw the gun in Mr. Knox's hand pointed at Corporal Callaway, even after hearing a shot come from the direction of Corporal Callaway. The evidence supports Corporal Jackson's belief, at the time he fired, that the action was necessary to protect Corporal Callaway, Corporal Blakeman, and himself.

The second portion of the inquiry requires this office to review the evidence to determine whether or not Corporal Jackson was reckless or negligent in forming his belief that the use of deadly force was necessary to protect Corporal Callaway. Corporal Jackson heard other officers shout that there was a gun. While he was aware that a round had been fired from the direction of

Corporal Callaway, Corporal Jackson saw that Mr. Knox had his hands up and still had the gun pointed in the direction of Corporal Callaway. Corporal Jackson was not reckless or negligent in forming his belief that deadly force was necessary at the time he fired.

Based on the available evidence and the application of expert opinion to that evidence, we have concluded that it was objectively reasonable for both Corporal Callaway and Corporal Jackson to believe that the use of deadly force upon Mr. Knox was immediately necessary for the purpose of protecting themselves and Corporal Blakeman. For this reason, the Department of Justice has concluded that the use of deadly force by Corporal Callaway and Corporal Jackson upon Mr. Knox does not constitute a criminal offense under the laws of the State of Delaware.