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VETERANS COURTHOUSE
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ESSEX COUNTY PROSECUTOR'S OFFICE CONCLUDES THAT AN OFFICER INVOLVED FIREARMS DISCHARGE IN NEWARK ON SEPTEMBER 15, 2017 WAS AN ACCIDENTAL DISCHARGE

The Essex County Prosecutor's Office ("ECPO") has completed its investigation into an officer involved firearms discharge on September 15, 2017, by an Essex County Corrections Officer, and has concluded that the firearms discharge was not purposeful, but an accidental discharge. ECPO determined that it is not necessary to present this matter to the Grand Jury because there were no material facts in dispute regarding the lawfulness of this use of force. The investigation was conducted in accordance with the July 28, 2015 Attorney General Supplemental Law Enforcement Directive Regarding Uniform Statewide Procedures and Best Practices for Conducting Police Use of Force Investigations ("Directive"). Pursuant to the Directive, the Attorney General's Office conducted an independent review of the use of force and agreed with ECPO's determination that there were no material facts in dispute and that displaying the firearm was justified and the discharge of the firearm was accidental. The Attorney General's Office concurred with ECPO that it is not necessary to present this matter to the Grand Jury.

The incident occurred on September 15, 2017, at approximately 3:15 am, when an off-duty Essex County Corrections Officer ("Officer") drove a friend to meet his ex-girlfriend at the White Castle at 642 Broadway, Newark, New Jersey. While the Officer and his friend were waiting inside the Officer's personal vehicle, two males approached from the rear of the vehicle and assaulted the Officer's friend through the open passenger window. The assailants then approached the driver's side of the vehicle, at which time the Officer exited, identified himself, and drew his service weapon. The Officer was struck in the head from behind by one of the assailants, causing the Officer to fall to the ground. A struggle for the Officer's gun ensued between the Officer and the two assailants, during which time one round discharged from the firearm into the ground. One of the assailants fled the scene on foot, and the other was apprehended on the scene. The ex-girlfriend who drove both assailants to the White Castle was arrested the following day.

The ECPO's Professional Standards Bureau and Crime Scene Unit conducted an investigation of the firearms discharge. Forensic evidence was collected, police reports were submitted and reviewed, surveillance footage was downloaded, and witness statements were obtained.

Surveillance footage shows the two assailants approaching the passenger side of the Officer's vehicle. An altercation is then observed towards the rear of the vehicle between the Officer and

the two assailants. Then, the two assailants are seen running away from the vehicle and out of the view of the camera. A statement was taken from the Officer corroborating the video footage.

Applying the Directive to the undisputed material facts outlined above, the Officer appropriately used constructive authority by exhibiting his weapon, and the firearm discharge was accidental. The Attorney General's Use of Force Policy (Rev. June 2000) ("AG's Policy") at §A (1), (3) provides that a law enforcement officer may unholster and/or exhibit a firearm "(d) When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm; [and] (e) When circumstances create a reasonable belief that display of a firearm as an element of constructive authority helps establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety." The law defines a "reasonable belief" as one which would be held by a person of ordinary prudence and intelligence. The AG's Policy further provides at §E(1) – (3) that to constitute deadly force, a law enforcement officer must act purposely. The credible evidence supports the conclusion that the Officer was justified in displaying his weapon, and that the discharge was not purposeful.

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