

# OFFICE OF THE ESSEX COUNTY PROSECUTOR

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## **ESSEX COUNTY PROSECUTOR'S OFFICE CONCLUDES THAT USE OF DEADLY FORCE WAS JUSTIFIED IN MAY 17, 2018 POLICE INVOLVED SHOOTING IN NEWARK**

The Essex County Prosecutor's Office ("ECPO") has completed its investigation into the May 17, 2018 use of deadly force by an off-duty Newark Police Officer ("Officer") and has concluded that the use of force was legally justified. ECPO determined that it is not necessary to present this matter to the Grand Jury because there are no material facts in dispute regarding the lawfulness of the 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 has agreed with ECPO's determination that there are no material facts in dispute and that the use of deadly force by the Officer in this case was justified. The Attorney General's Office concurred with ECPO's conclusion to forego presentation of this matter to the Grand Jury.

The incident occurred on May 17, 2018, at approximately 10:00 pm, when an off-duty Newark Police Officer observed a Carjacking. The Officer was in his personal vehicle waiting in the single lane Drive-Thru at Burger King located at 2 Clay Street in Newark when he observed three (3) black males on foot approach the vehicle behind him. One male pointed a handgun at the driver and attempted to open the driver side door. The Officer then observed the assailant and the driver struggle over the weapon. The Officer exited his vehicle and shouted "Police!", but the struggle continued. The Officer fired four (4) rounds at the armed assailant. All three suspects immediately fled on foot, during which time the armed assailant pointed his weapon toward the Officer. The Officer fired one (1) round at the armed assailant. There is no evidence that anyone was injured during this encounter and the three suspects have yet to be apprehended.

Personnel from the ECPO's Professional Standard Bureau responded and an investigation was conducted into the Officer's use of deadly force. Investigative personnel canvassed the scene and collected forensic evidence. Police Reports were submitted and reviewed. Statements were obtained from civilians and law enforcement personnel, including, but not limited to, the victim of the Carjacking and the Officer.

Applying the Directive to the undisputed material facts outlined above, the use of deadly force by the Officer was justified pursuant to N.J.S.A. 2C:3-5, Use of Force in Protection of Others, and N.J.S.A. 2C:3-4, Use of Force in Self-Protection. N.J.S.A. 2C:3-5 provides that "the use of force upon or toward another person is justifiable to protect a third person when: (1) the actor

would be justified under section 2C:3-4 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; (2) under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would be justified in using such protective force; and (3) the actor reasonably believes that his intervention is necessary for the protection of such other person.” N.J.S.A. 2C:3-4, Use of Force in Self-Protection, states that “the use of force upon or toward another person is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.” The law defines a “reasonable belief” as one which would be held by a person of ordinary prudence and intelligence situated as the actor was at the time.

The Officer indicated that he was in fear for the life of the victim during the Carjacking and was in fear for his own life during the armed assailant’s flight therefrom. The Officer believed that discharging his weapon in both instances was necessary for the protection of life. An independent analysis of the undisputed material facts led to the determination that the Officer’s beliefs were reasonable, and the use of deadly force in this matter was justified pursuant to all applicable laws and the Attorney General Guidelines.

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