

# OFFICE OF THE ESSEX COUNTY PROSECUTOR

**THEODORE N. STEPHENS, II**  
**ACTING ESSEX COUNTY PROSECUTOR**

ESSEX COUNTY VETERANS COURTHOUSE, NEWARK, NEW JERSEY 07102

Tel: (973) 621-4700

Fax: (973) 621-5697



**ROMESH C. SUKHDEO**  
ACTING FIRST ASSISTANT PROSECUTOR

**MITCHELL G. McGUIRE III**  
ACTING CHIEF OF DETECTIVES

## **ESSEX COUNTY PROSECUTOR'S OFFICE CONCLUDES THAT USE OF FORCE WAS JUSTIFIED IN SEPTEMBER 7, 2018, NON-FATAL POLICE SHOOTING IN IRVINGTON**

The Essex County Prosecutor's Office ("ECPO") has completed its investigation into the September 7, 2018, use of deadly force by a Police Officer ("Officer 2") of the Irvington Police Department, and has concluded that the use of force was legally justified. Legislation was passed in January of 2019 requiring the Attorney General's Office Shooting Response Task Force to investigate all fatal shootings involving law enforcement. This investigation was conducted by ECPO, as the incident occurred prior to the legislation and involved a non-fatal police shooting. 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 the use of force. The investigation was conducted in accordance with the Attorney General's Independent Prosecutor Directive (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 the use of force by Officer 2 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 September 7, 2018, at approximately 10:00 p.m., after a male armed with a silver revolver allegedly committed an armed robbery of Mueller Star Liquors, located at 1050 Clinton Avenue, Irvington, New Jersey. The suspect fled the liquor store on foot while carrying a box containing proceeds from the robbery. Irvington Police Officer 1 responded to the area and located the suspect walking south on Howard Street. Officer 1 gave chase on foot heading south on Howard Street toward Nye Avenue.

Irvington Police Officers 2, 3, 4, and 5 responded to the area of Howard Street and Nye Avenue. Officers 2, 3, and 4 gave chase on foot, along with Officer 1. All officers were in full police uniform. Officer 2 was the first officer running directly behind the suspect. He yelled commands such as "Drop the Gun!" and "Stop - Police!" As Officer 2 began to close the gap between himself and the suspect, the suspect turned his body back towards Officer 2 and pointed his handgun towards Officer 2. Officer 2 discharged his duty weapon three times, striking the suspect two times. The suspect dropped his weapon and continued to flee. The officers immediately recovered the suspect's gun. A few blocks up, the officers caught up to the suspect and he was apprehended. EMS responded and transported the suspect to the hospital for treatment of non-life threatening injuries.

Personnel from ECPO's Professional Standard Bureau (PSB) and Crime Scene Unit (CSU) responded and investigated. Additionally, statements were obtained from civilians, law enforcement personnel, and the suspect. The statements were consistent with each other and with the physical evidence.

Applying the Directive to the undisputed material facts outlined above, the use of deadly force by Officer 2 was justified pursuant to N.J.S.A. 2C:3-4, Use of Force in Self-Protection. The statute 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.

Officer 2 stated that he was in fear for his life during this encounter with the suspect. He knew that the suspect was fleeing from an armed robbery. He observed the suspect repeatedly refusing to obey officers' commands to stop and drop the weapon. Furthermore, he observed the suspect point a gun at him during the foot pursuit. Officer 2 believed that shooting the suspect was necessary for the protection of his life. An independent analysis of the undisputed material facts led to the determination that Officer 2's beliefs were reasonable, and that the use of deadly force in this matter was justified pursuant to all applicable laws and the Attorney General Guidelines. This statement was prepared and disseminated to the public in accordance with §8 of the Directive. PSB# 2018-253