

# OFFICE OF THE ESSEX COUNTY PROSECUTOR

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### **THE ESSEX COUNTY PROSECUTOR'S OFFICE CONCLUDES THAT USE OF FORCE WAS JUSTIFIED IN NOVEMBER 13, 2018 POLICE SHOOTING IN EAST ORANGE**

The Essex County Prosecutor's Office ("ECPO") has completed its investigation into the November 13, 2018 use of deadly force by an East Orange Police Officer. ECPO has concluded that the use of force was legally justified, and 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 then applicable 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) and Independent Prosecutor Directive 2019-4 ("Directives").<sup>1</sup> Pursuant to those Directives, 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 this officer was justified. The Attorney General's Office concurred with ECPO's conclusion to forego presentation of this matter to the Grand Jury.

On November 13, 2018, at approximately 9:00 pm, Officers 1 and 2 of the East Orange Police Department (EOPD) Violent Crimes Task Force (VCTF) were conducting surveillance on an unrelated investigation in the area of N. Walnut Street and Park Avenue. The Officers were wearing street clothes and Officer 1 was utilizing an undercover vehicle with Officer 2 as the front seat passenger. The officers heard a single gunshot and proceeded in their vehicle with caution. They observed an unknown male suspect chasing after an unknown male victim on N. Walnut Street, and shooting at him multiple times.

Officer 2 reported the shots fired to dispatch while Officer 1 drove the vehicle to a safer location on Park Avenue. The officers then observed the shooting suspect walk across Park Avenue and toward the passenger side of their parked vehicle. Officer 2 exited the passenger side of the vehicle with his badge displayed and his handgun pointed at the suspect. Officer 2 identified himself as police and yelled commands for the suspect to put his hands up. The suspect retrieved his handgun from his waistband, headed across the front of the undercover vehicle, and pointed his handgun at Officer 2. Officer 2 discharged four (4) rounds at the suspect.

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<sup>1</sup> Because this incident occurred prior to January 30, 2019, presentation to the grand jury was not required under Senate Bill 1036, which modified N.J. Statutes 52:17B-107, and requires the Attorney General to conduct investigations of fatal police encounters and present them to the Grand Jury.

The suspect moved further away on Park Avenue, failing to comply with additional commands to drop the gun, and continuing to point his weapon at Officer 2. Officer 2 discharged two (2) more rounds at the suspect. The suspect dropped the weapon, and was secured by Officer 1. Additional EOPD units and EMS responded shortly thereafter. The suspect, identified as Bryan Witherspoon, was transported to University Hospital where he was treated for, and survived, multiple gunshot wounds. No officers or civilians reported any injuries.

Personnel from ECPO's Professional Standard Bureau (PSB) and Crime Scene Investigative Bureau (CSIB) responded and investigated this officer-involved shooting. PSB canvassed the area for witnesses and reviewed all available surveillance video. Statements were obtained from civilians and law enforcement personnel.

CSIB processed and photographed the scene. Both Officers' duty weapons were recovered and analyzed. Officer 1's weapon was determined to be at full capacity. Officer 2's weapon was found to be missing six (6) rounds of ammunition. The CSIB recovered six (6) discharged cartridge casings from the area of the officer-involved shooting, and all six (6) spent casings were determined to have been fired from Officer 2's weapon.

The suspect's handgun was also recovered and analyzed by CSIB. The gun was loaded with one round in the chamber and eight rounds in the 16-round high capacity magazine. The CSIB recovered four (4) discharged cartridge casings from the scene of the initial shooting observed by the officers. All four (4) of those spent casings were determined to have been fired from the suspect's weapon.

On March 22, 2019, Bryan Witherspoon pled guilty to one (1) count of Unlawful Possession of a Weapon (handgun), a 2<sup>nd</sup> degree violation of N.J.S.A. 2C:39-5(b). On April 29, 2019, he was sentenced to five (5) years NJSP with 42 months of parole ineligibility.

Applying the relevant statutes and 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(a), Use of Force In Self-Protection. N.J.S.A. 2C:3-4(a) provides 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 indicated that he believed his life was in imminent danger when the suspect pointed a handgun at him, and that he also believed using deadly force was immediately necessary to protect same. An independent analysis of the undisputed material facts led to the determination that his beliefs were reasonable. Therefore, this use of deadly force 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# 2018-342.