

# OFFICE OF THE ESSEX COUNTY PROSECUTOR

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### ESSEX COUNTY PROSECUTOR'S OFFICE CONCLUDES THAT USE OF FORCE WAS JUSTIFIED IN NON-FATAL POLICE SHOOTING IN ELIZABETH

The Essex County Prosecutor's Office ("ECPO") has completed its investigation into a December 22, 2018 shooting involving two Patrol Officers ("the Officers") of the Elizabeth Police Department, and has concluded that the use of force by those officers was legally justified. ECPO further determined there to be no basis to present this matter to a Grand Jury given the absence of any material facts in dispute regarding the lawfulness of the officers' actions. The New Jersey Office of the Attorney General additionally conducted an independent review of this incident and agreed with ECPO's conclusion and determination. ECPO (rather than the Union County Prosecutor's Office) assumed responsibility for this investigation at the request of the Attorney General's Office to avoid any appearance of a conflict of interest.

At approximately 1:30 a.m. on December 22, 2018, four Elizabeth police officers responded to the report of a domestic dispute at 300 Court Street. Upon arrival, Officers 1 and 2 entered the building and spoke with Civilian A at the entrance of the family's second-floor unit. Meanwhile, Officers 3 and 4 remained outside on the street, where they spoke with A.T.

Within about 11 minutes of the officers' arrival at the location, Civilian A and Officers 3 and 4 saw Michael Bates approaching them from across the street. According to their statements, Bates was shouting, "I'm gonna [redaction] you guys up," "I know you the cops," and "I don't give a [redaction]." Bates can be heard shouting in the officers' body-worn camera (BWC) footage. The rest of the actual shooting incident occurred within about 15 seconds.

Officer 3 heard Bates yell that he (Bates) had a gun, although this is not discernible in the BWC footage. In the BWC footage, however, Civilian A clearly can be heard saying, "Oh my God, what is that? Oh my God," before Officer 4 said, "Yo, does he have a gun in his hand? Yo, yo, he has a gun." Civilian A then began repeating, "He has a gun, he has a gun," as she ran back into the building. At that point, Officer 3 took cover behind a parked vehicle while Officer 4 said over his police radio, "We have a guy with a gun. He's got a gun."

Meanwhile, inside the building, Officer 1 heard the commotion outside and started running down the stairs toward the front door as Civilian A entered the building screaming, "Oh my God, he got a gun, oh my God, he got a gun." Officer 2 followed down the stairs. Both officers drew their weapons as Officer 1 reached the door first. Officer 1, when he reached the door and looked outside, saw Bates, in black clothes and a ski mask standing in the street,

holding a dark object with both hands and turning toward him while pointing the object in Officer 1's direction. At that point, Officer 1 fired at Bates. Officer 2 heard the gunfire as she reached the door beside Officer 1, then saw Officer 3 crouched behind a parked vehicle and Bates standing in front of it. She believed Bates was firing at the officers, so she then fired at him as well.

An additional witness, Civilian C, the daughter of Civilian A and Civilian B, told police that she saw Bates from her bedroom window inside the apartment. She heard him yelling, could not clearly hear what he said, but also saw that he was holding what appeared to be a gun.

Bates sustained a gunshot wound to his abdomen and a graze wound to his right flank. As the officers approached Bates, he can be seen in the BWC footage yelling "no gun, no gun" while lying on his back with his empty hands raised into the air before responding to officers' orders to turn and lie on his stomach. As the officers restrained and handcuffed him, they repeatedly asked him where the gun was. Bates responded multiple times that he did not have a gun while also saying, "Officers, officers, it's Michael Bates . . . they beat my girl, they beat my girl up, yo." Asked why he would approach them in the way that he did, Bates replied, "They jumped my [redaction] who I pay the child support to . . . they jumped my girl, yo." Asked where the gun was and what he had in his hand, Bates replied, "No gun, no gun . . . my phone," and then referred to the parked vehicle beside him saying, "Look at the roof . . . look at the top of the roof." Bates also continuously told the officers, "You all did what you were supposed to do," "You did what you had to do," and "You did a good job."

At one point, Officer 2 asked Bates, "Why would you do that?" Bates replied, "They jumped my [redaction], my lady. You all good, you did what you was supposed to . . . You all did what you was supposed to do." Bates then continued to tell the officers to relax, that they did what they were supposed to do, "I'm hit, I'm good, I'm good," "I got you bro," and "Don't worry about it." Lying on the pavement as Officer 4 applied pressure to his wound, Bates further stated, "I apologize to you all, yo. They put their hands on my female." He also said, "I'll sign a statement that you all did what you was supposed to do . . . I got you all."

No gun was recovered from the scene, but officers did locate two black cell phones on the hood of the vehicle where Bates had been standing when he was shot. The incident, including the various statements by Bates described above, was captured in part by the four officers' body-worn cameras. And all witnesses identified above, the four officers and three civilians, provided consistent statements describing the incident.

Applying the Directive to the undisputed material facts outlined above, the use of force by the Officers was justified pursuant to N.J.S.A. 2C:3-7e, which permits use of force by a law enforcement officer when the officer reasonably believes that such force is immediately necessary to prevent a person from committing or consummating the commission of a crime involving or threatening bodily harm or a breach of the peace. To justify the use of deadly force under this provision, the officer must reasonably believe it is likely that the person he seeks to prevent from committing a crime will endanger human life or inflict serious bodily harm upon another unless the commission or consummation of that crime is prevented, and that the use of such force presents no substantial risk of injury to innocent persons. N.J.S.A. 2C:3-7e(2).

Additionally, the Attorney General's Use of Force Guidelines provide that an officer may use deadly force when he reasonably believes it is "immediately necessary to protect the officer . . . from imminent danger of death or serious bodily harm."

N.J.S.A. 2C:3-7a further permits the use of force by a law enforcement officer when making or attempting to make an arrest where the officer reasonably believes such force is necessary to effect the arrest of a person whom the officer reasonably believes knows the purpose of the arrest. To justify the use of deadly force under N.J.S.A. 2C:3-7b(2), an officer must reasonably believe he is attempting to arrest the subject for a certain class of crimes, including homicide or attempt thereof. The officer also must reasonably believe that the force used involves no substantial risk of injury to innocent persons, and that there is an imminent threat of deadly force to himself or a third party or that the use of deadly force is necessary to prevent an escape.

The Offices of the Attorney General and of the Essex County Prosecutor are satisfied that the undisputed facts establish that Elizabeth Police Officers 1 and 2 used the appropriate force necessary to protect their lives and the lives of others and that they were legally justified in doing so. This investigation was conducted consistent with the *New Jersey Attorney General's Law Enforcement Directive 2006-5* and the *July 28, 2015 Attorney General Supplemental Law Enforcement Directive Regarding Uniform Statewide Procedures and Best Practices for Conducting Police Use of Force Investigations* and the *Independent Prosecutor Directive 2019-4*. Under those Directives, the County Prosecutor's Office conducts the initial investigation, unless the Attorney General's Office determines that it has a conflict of interest. Because there was a potential appearance of a conflict of interest in this case, the Essex County Prosecutor's Office conducted the investigation and the Attorney General's Office then conducted an independent review of the use of force. The Attorney General's Office agreed with ECPO's determination that there were no material facts in dispute and that the use of force by these officers was justified and with ECPO's conclusion to forego presentation of this matter to the Grand Jury. Because this was a non-fatal shooting and occurred prior to January 2019, the effective date of Senate Bill 1036, which modified N.J. Statutes 52:17B-107, presentation to the grand jury was not required under that law.