

State of Connecticut
OFFICE OF INSPECTOR GENERAL



Report Concerning
Use of Deadly Force by the Derby Police Department on April 26, 2021

Robert J. Devlin, Jr.
Inspector General

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Acknowledgments

The Office of Inspector General acknowledges the assistance provided to this investigation by the Connecticut State Police Western District Major Crime Squad, the Department of Emergency Services and Public Protection Forensic Science Laboratory, the Derby Police Department, retired Danbury Judicial District State's Attorney Stephen J. Sedensky III, and Ansonia/Milford State's Attorney Margaret E. Kelley.

INTRODUCTION

On April 26, 2021, Patrick Foley was a 35-year-old Caucasian male. He had been a member of the Derby Police Department for just short of 13 years and his disciplinary history is detailed in this report. At approximately 7:00 a.m. that morning, Officer Foley was seated alone in his police cruiser on Division Street along the Ansonia/Derby town line. After two individuals approached his car, he discharged his issued firearm four times, striking Corneilius McCullough, a 29-year-old African American, in the leg.

Danbury Judicial District State's Attorney Stephen J. Sedensky III submitted a preliminary status report regarding this incident. On November 3, 2021, pursuant to General Statutes § 51-277a(a)(1), the Office of Inspector General assumed responsibility for the investigation.¹ The details of the investigation are contained in this report.²

Briefly stated, the investigation establishes that at the time that Officer Foley discharged his firearm, Mr. McCullough was unlawfully firing a handgun at an occupied vehicle or threatened imminent use of deadly force against Foley. Accordingly, I conclude that under the circumstances presented, Officer Foley justifiably used deadly force.

¹ As relevant here, General Statutes §51-277a(a)(1), provides, "Whenever a peace officer, in the course of such officer's duties uses ... deadly force ... upon another person, the Division of Criminal Justice shall cause an investigation to be made and the Inspector General shall have the responsibility of determining whether the use of physical force was justified under section 53a-22."

² The timeline for this investigation is summarized as follows:

4/26/21: Date of incident;

4/26/21: Chief State's Attorney Richard J. Colangelo, Jr. assigns Danbury Judicial District State's Attorney Stephen J. Sedensky III to lead the investigation. State's Attorney Sedensky requests the Connecticut State Police Western District Major Crime Squad to investigate the use of force incident;

4/26/21: Western District Major Crime detectives commence investigation;

4/28/21: State's Attorney Sedensky submits a Preliminary Status Report regarding the incident;

10/8/21: Robert J. Devlin, Jr. is sworn in as Inspector General;

11/3/21: Office of Inspector General assumes responsibility for the investigation;

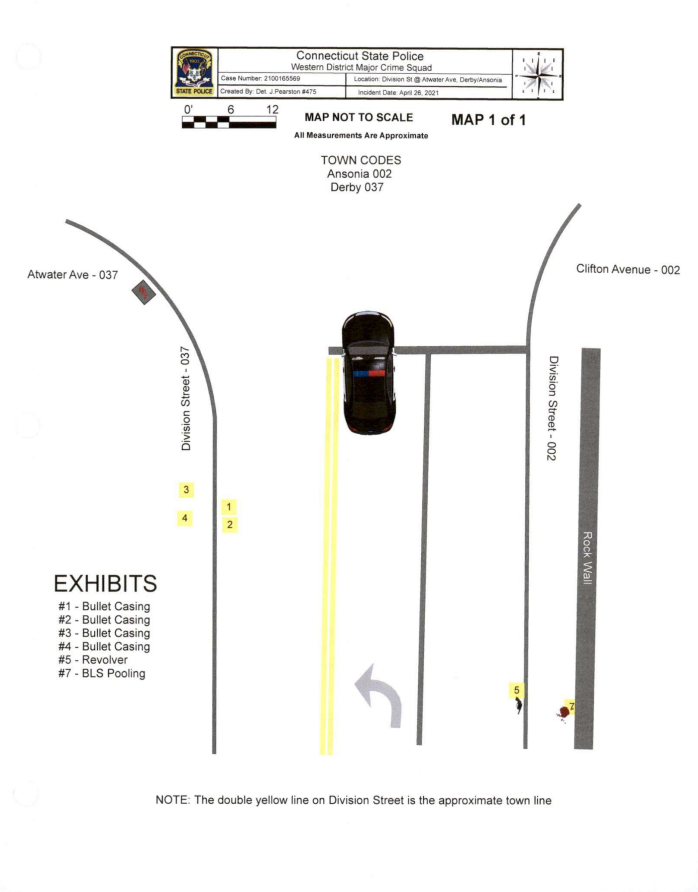
12/10/21: State's Attorney Sedensky transfers his copy of the file to the Office of Inspector General;

7/18/22: Office of Inspector General receives complete file from Connecticut State Police.

INVESTIGATION

Scene and Summary

On Monday, April 26, 2021, Officer Patrick Foley of the Derby Police Department was scheduled to work a road job. This is an off-duty assignment officers can request where they provide security and ensure safety at road work sites. Officers who take these assignments act within the full scope of their authority as police officers while on duty, including reporting to and from the construction site. On this day, Officer Foley arrived at the department at 7:00 a.m., and put on his uniform, which included his issued firearm, a Sig Sauer P226. He signed out a marked Derby police cruiser and drove south on Division Street before stopping at a red light where Division intersects with Atwater Avenue and Clifton Avenue.³



[Scene sketch map]

³ Division Street at this location is a border between the towns of Derby (to the south) and Ansonia (to the north). Atwater Avenue extends into Derby while Clifton Avenue extends into Ansonia.

While at the red light, Officer Foley saw two males run between two houses on Atwater Avenue. They ran past along Atwater Avenue and approached his cruiser. One wore a black sweater, and one wore a red hoodie. The male in black, later identified as Corneilius McCullough, banged his fist against the front driver's side window. Officer Foley exited his vehicle in order to render assistance to the person, who said he was being chased. During their brief encounter, the man continuously fidgeted and touched his waistband. The other male, later identified as Lamont Jefferson, opened the rear driver's side door and began to enter the cruiser and Foley told him to stop. Foley tried to obtain additional information from McCullough about what was happening and, as he did this, a black Infiniti sedan drove slowly past them. McCullough followed the car on foot, lifted up his shirt and took out a .38 caliber revolver and fired several shots at the Infiniti. Foley removed his duty weapon from its holster and fired one round at McCullough, who then turned and ran back towards Foley. Foley then fired additional rounds at McCullough until McCullough fell to the ground.



[Officer Foley's cruiser at the intersection of Division Street, Ansonia and Atwater Avenue, Derby]



[Location of black 2008 Infiniti G35 operated by Witness #1]

Ansonia and Derby officers stopped the black Infiniti on Division Street, and removed its driver at gunpoint. He was identified as Witness #1, a hospital worker coming off a night shift. The vehicle had what appeared to be two bullet holes in the driver's side rear door. EMTs and a paramedic arrived at McCullough's location and began treating him for wounds in his leg before transporting him to Bridgeport Hospital for further treatment.



[Black 2008 Infiniti G35 with bullet holes]

Evidence at Scene

Members of the Connecticut State Police Western District Major Crime Squad (WDMCS) were assigned to the investigation. They arrived on scene at about 9:00 a.m. that morning. Officer Foley and McCullough were no longer present. Detectives photographed the scene, collected evidence, and interviewed witnesses. Among the evidence collected were four Winchester brand nickel-plated .40 caliber S&W cartridge casings along the edge of Division Street behind and to the south of the police cruiser. Two casings were located on the pavement adjacent to the curb and two were on the bare ground adjacent to the roadway. Detectives found a Smith & Wesson model 642-2 .38 Special five-shot revolver on the pavement on the opposite side of the roadway along the curb. The cylinder was opened and was found to contain five expended PMC brand .38 Special cartridge casings. On a grass strip adjacent to the revolver on the north side of Division Street, police located a substance that field-tested positive for blood.



[Location of cartridge casings from Foley's gun]

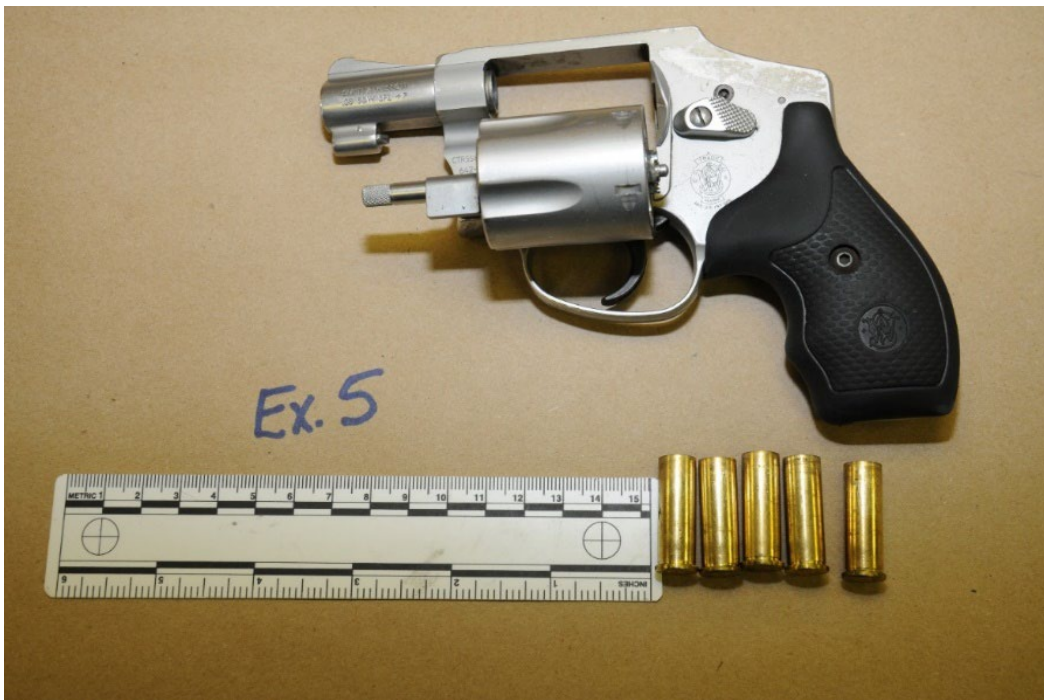


[Cartridge casings from Foley's gun]



[Location of McCullough's gun]





[McCullough's gun with empty cartridge casings]

Detectives located an apparent bullet strike in this area on the face of a stone wall. A bullet hole was located on the west side of a residence at 91 Division Street. The bullet was recovered from the house's siding.



[Location at 91 Division Street of stray bullet from Foley's gun]



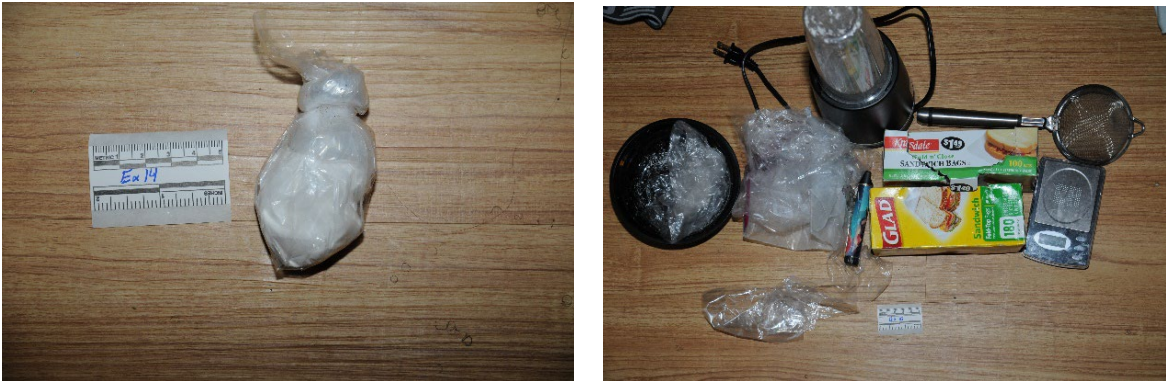
[Bullet hole in siding]



[Deformed bullet from 91 Division Street]

On the strength of a search warrant, police searched McCullough's residence at 120 Atwater Avenue. They noted there were signs of a violent incident, as the kitchen door to the basement living area had been damaged and splintered wood fragments were on the floor. A broken cell phone was on the shelf in the basement stairway and fragments of glass were on the stairs. On a nightstand located in the southwest corner of the basement bedroom, police located a knotted plastic baggie containing a white powder. Also present was an electronic scale, a box of plastic baggies, a mixing bowl, a small blender, and a small wire strainer. White powder residue was observed in the bowl, blender, and on the scale and was consistent with

paraphernalia associated with narcotics sales. The baggie of white powder weighed 26.7 grams. All items were seized.



[Plastic baggie with white powder (left) and paraphernalia (right) seized from McCullough's residence]



[Gun cleaning kit seized from McCullough's residence]

Forensics

State Police located two bullet holes and two bullets in the 2008 black Infiniti operated by Witness #1. The bullet holes were designated "A" and "B" for documentation purposes, not necessarily reflecting which shot struck first. Bullet hole A was in the left rear door, two feet from the ground and 9 feet 4 inches from the bumper. The bullet did not penetrate the door. A projection rod was placed to visualize trajectory and measurements were taken. Measurements showed the bullet struck the door at approximately a 20-degree downward angle and from back to front. Bullet hole B was located in the left rear fender about 2 feet 8

inches from the ground and 11 feet 11 inches from the front bumper. The bullet did not penetrate the fender. Measurements indicated that bullet impacted at about a 5-degree downward angle from back to front.



[Bullet trajectory in Infiniti]

The duty firearm carried by Officer Foley was a .40 caliber semi-automatic Sig Sauer P226 pistol. The gun was seized by state police and turned over to the state Forensic Science Laboratory for analysis, along with the four .40 caliber Winchester cartridge casings and two bullet fragments. When submitted to the lab, the pistol had its magazine removed and one chambered round removed. Eight bullets remained in the magazine. The lab test-fired the gun and examined and compared the cartridge casings. The lab's analysis showed that the pistol was operational, had a capacity of holding 12 rounds in the magazine plus one round chambered. The laboratory determined that the four casings were all fired from Officer Foley's Sig Sauer.

The Smith & Wesson revolver was also sent to the lab, which was unable to detect fingerprints on the firearm. It is pending further testing for DNA.⁴ The two bullets retrieved from the Infiniti were also tested at the lab, which determined that they did not come from Officer Foley's gun. Due to damage and lack of detail, tests were inconclusive as to whether they were fired from the revolver. State police requested a firearms trace of the revolver through the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ATF trace indicated the gun was stolen from a federal firearms licensee in 2012.

Several items were examined for the presence of gunshot residue (GSR), which could indicate an object was recently exposed to gunfire. GSR was detected on Officer Foley's jacket. Regarding McCullough, GSR was detected on the left and right cuff area of his shirt, his left and

⁴ Per standard procedure, the forensic lab will not test the gun for DNA until McCullough's attorney is notified and sends an observer or declines to do so, as the biological sample will be destroyed during the test.

right sweatpants pockets, as well as his left hand. It is noted that the GSR collection form reports McCullough as being left-handed, however the Uniform Arrest Report lists McCullough as right-handed.



[Officer Foley's duty firearm]

The state Forensic Lab examined the white powder substance in the plastic baggie seized at 120 Atwater Avenue and determined it to be fentanyl.

Medical Records

Connecticut State Police Major Crime detectives obtained Corneilius McCullough's medical records with a search warrant. McCullough arrived at the Emergency Department at Bridgeport Hospital at 7:50 a.m. He was diagnosed with three gunshot wounds to the lower right leg and thigh.⁵ Although a toxicology screen was ordered for McCullough by his treatment team, the test was never performed prior to him being discharged. Records, however, show he provided a patient history reflecting that he used cannabis and ecstasy on April 21, 2021.

Officer Foley was taken to Griffin Hospital after the incident and his treatment records were obtained with his consent. His chief complaint was an adrenaline rush. He was observed briefly and released home.

⁵ Although a report written by Connecticut State Police Detective Corey Clabby says a staff member at the Bridgeport Hospital Emergency Department told him McCullough suffered two gunshot wounds, McCullough's medical records indicate there were three penetrative wounds.

Digital Evidence

The incident was not captured on any police owned video. At the time of the incident, Derby officers were not issued body worn cameras and the cruiser issued to Officer Foley did not have a dash camera. During the police canvass of the neighborhood, detectives interviewed Jocelyn Kahyaoglu of 91 Division Street, Ansonia, just southeast of the incident. She had a camera system in place directed at her driveway that was operational at the time. She told detectives that she viewed the video and it captured Foley's vehicle as it approached the intersection with Atwater Avenue but it did not capture the incident. She was unable to produce a copy of the video for detectives. Kahyaoglu said she is a trained firearms instructor and heard seven shots. Police also interviewed Debra Nichols of 87 Division Street. She said she heard two and then three gunshots and saw a black car race down the hill toward Pershing Drive. She said she had a Ring camera on her residence, but that it did not capture the incident.

Officer Foley's Statement

Officer Patrick Foley submitted a written statement regarding the events of April 26, 2021.⁶ That statement, prepared with the assistance of his attorney, Donald Cretella, is reproduced in its entirety here:

This document is in regards to the incident that occurred on April 26, 2021.

I left my residence around 0645 hours after accepting a road job. I arrived at the Derby Police Department (125 Water Street) at approximately 0700 hours and changed into my department issued road job uniform. This consisted of a high visibility coat with DPD patches and marking, and a blue beanie hat that that the DPD logo on the front. I then attached my department issued firearm SIG Sauer P226 to the right side of my hip. The road job I accepted required the use of a DPD cruiser. I then acquired a marked Derby Police cruiser (53-DE) and drove the vehicle to the gas pumps at the Ansonia DPW to fill the gas tank.

I left the gas pumps at approximately 0715 hours and drove south on Division Street towards Pershing Drive. I then traveled straight over Pershing Drive and was driving up the Division Street hill heading towards Atwater Avenue. I stopped at a red light in the left lane designated only for left hand turns.

⁶ It should be noted that Attorney Cretella submitted two documents on behalf of Officer Foley. The first was submitted on June 2, 2021. When reviewed by the Office of Inspector General, it was observed that that document was an unsigned and unsworn draft version. Through counsel, Officer Foley submitted a signed sworn statement on April 26, 2022.

As I sat idle at the light, I saw two males to my left running between two houses on the south side of Atwater Avenue. They ran between a beige house and the last house on Atwater Avenue before Division Street. One male was wearing a black sweater and the other male was wearing a red hoodie type shirt. The male wearing the red was running behind the other male. The males kept running at a fast pace across Atwater Avenue and then continued to run on Atwater Avenue towards my cruiser.

The male in the black hastily banged with his fist on the driver's side front window. I exited my cruiser to offer this male assistance. I asked him what was wrong and he said someone was chasing him. It should be noted that at no time, did I see anyone chasing these two young males or anyone following them from the first time I saw them running between the houses to when they approached my vehicle.

While speaking with the male in the black, he was fidgety, could not stop moving his body and kept reaching in or around his waistband. He said that he needed to get out of the area. I then reiterated what he said and asked if he needed to leave the area and he said yes. The male in the red opened the driver's side rear door to enter my vehicle. The male in red was partially inside my vehicle when I told him to get out of my vehicle. I have made it a practice as a police officer to search or at least pat down anyone entering my cruiser for officer safety, including citizens who are not under arrest. I called into dispatch using my handheld radio which was in my left hand of the situation that was occurring.

As I was trying to gather more information regarding the male in black's complaint about people chasing him, he kept backing away from this officer, kept looking around and would not stand still. He kept reaching for his waistband during this whole encounter. It appeared to me that this male was paranoid and that he was under the influence of some type of narcotic. I asked him multiple times to better explain to me what was occurring.

A black Infiniti 4-door sedan slowly drove by me and the two males. The vehicle was traveling north on Division Street going down the hill. The vehicle was driving at a slow speed. The male in black started following the car on foot on the driver's side. He was bent over leaning towards the vehicle. I then observed this male lift up his shirt, reach into his waistband, produce a firearm and fire multiple shots into the vehicle. As this male was firing his gun, I removed my department issued Sig Sauer P226 and pointed it at the male. I held my weapon with only my right hand, which is my dominant hand, due to my radio being used by my left hand. I discharged my weapon. The male was still next to the vehicle when I started to discharge my firearm. I discharged one round at the male while he was still in close proximity of the vehicle, fearing he was going to continue shooting into the car. After one shot was discharged by me, the male started to run towards the west side curb line of Division Street. I discharged more rounds at this male as he was now turning towards me. The male then fell to the ground at which time I immediately ceased firing. The

black Infiniti, and its operator, displayed no danger to anyone on scene including the suspect male.

The male fell on the curb of Division Street. I then immediately radioed "shots fired" and that a black Infiniti was traveling down Division Street towards Pershing Drive. While approaching the male, he was laying on his stomach asking for help. Approximately five feet away from his person was a Smith and Wesson Airweight revolver. I then focused my attention to the male in red. I pointed my firearm at him and he raised his hands immediately. He was told to get on the ground and not move. He complied.

I then made numerous radio transmissions asking for an ambulance and still calling out the location of the Infiniti. OFC Walker arrived on scene and I directed him towards the Infiniti and he stopped it using his marked cruiser.

I stood over the male who fired the gun to detain him. He was never placed in handcuffs. OFC Rivera arrived on scene in his personal car and I yelled for him to handcuff the male in red. Upon his arrival, the male in black was still in a paranoid state and thought OFC Rivera was one of the persons chasing him. OFC Kowalec also arrived on scene and placed the male in red in handcuffs and placed him in the back of the marked cruiser. At this point, numerous Officers from different agencies arrived on scene to assist along with the ambulance.

I gave the male medical attention by placing pressure on the visible wound in his right thigh. A paramedic came to my location and took control of the male's medical attention. I stepped away from the curb and stood by my cruiser. I explained to LT Frosceno that I discharged my firearm. He then had OFC Kowalec bring me to Griffin Hospital for evaluation.

McCullough's Statements and Behavior

Ansonia Police Officers accompanied McCullough on the ambulance ride to Bridgeport Hospital and remained with him until detectives from the state police major crime squad could interview him. While in the Emergency Department, he turned to one of the officers and said, "My bad, man." He exhibited paranoid behavior in the form of complaining that people outside the hospital room were talking about him even though there was no one outside the room. He also complained to officers that two people were in the adjacent room looking for him, although that also was not correct. He acted in a paranoid manner on the ambulance ride to the hospital.

While at the hospital, McCullough gave a verbal statement to police that was recorded on Ansonia Patrol Officer Jonathan Edwards' body camera as well as a recorder used by the state police. His recorded statement is summarized as follows:

McCullough told police he was spending time at his cousin Lamont Jefferson's house the previous night. At some point, they decided to go to McCullough's residence at 120 Atwater Avenue in Derby. McCullough said he told Jefferson he was worried someone may try to rob him because he was wearing gold necklaces. He mentions "weed" during the interview but when asked if he smoked it, he said he did not. He said he was paranoid that cars were following him earlier that evening and that he heard gunshots at one point. He said he and Jefferson went outside and saw an older Oldsmobile being operated by an older male. He told Jefferson to watch the cars. He said Jefferson said, "Bro you high you're beat." He saw a police officer at the corner and they ran to it, panicked. They were trying to "fake out" the driver of the Oldsmobile. The officer wouldn't let them in the car.

"Shit that's where I lost everything right there. I fucking panicked and next thing I know I was fucking ... the car across the street is shot up."

"I was like yo don't shoot me man don't shoot me I was just trying to protect myself, bro," McCullough claims he said to the officer. Asked if he had a gun, McCullough said, "Nah I don't remember what the hell happened bro."

Asked again if he had a gun, he replied, "No, I don't have a license." He repeated the statement about being concerned his cousin might be robbed. McCullough's statements were disorganized and often nonsensical. He often talked in circles. He again mentioned the Oldsmobile, saying he panicked and that "he was trying to take me out and he kicked us out and I started running. I don't even know where I was trying to run. I just felt that shit. I thought he shot my little cousin. I was telling him, 'why you shooting us.' We was just trying to get out of the way bro." He denied having a gun but said he threw something at the car he thought was an Oldsmobile.

Detective Ryan Frechette then entered the hospital room and obtained gunshot residue swabs from McCullough and photographs of his injuries. Following this, all officers left McCullough's room and the first audio recording ended. Later Detectives Clabby and Frechette re-entered McCullough's room and McCullough spontaneously stated, "I'm going to tell you what I did." He then admitted to both detectives that he was in possession of a firearm and fired that firearm in the presence of the police officer whose car he had approached for help. Detectives then began to record the conversation once again. Again, he stated he had a gun and fired it at a vehicle as he felt he was protecting his cousin. He again spoke about trying to "fake out" the Oldsmobile by running toward the cop. McCullough explained that everything happened quickly and the next thing he knew he was across the street and had been shot. Detectives attempt to explain to him the peril of pulling out a gun in front of a police officer and McCullough interjects, "That's why I got shot." Asked what he would have done if he were the police officer, McCullough states, "Same shit!"

To review portions of McCullough's recorded statement, click [here](#) and [here](#).

Witness Statements

Witness #1⁷

Witness #1 submitted a written statement regarding the events of April 26, 2021, to WDMCS detectives. The statement may be summarized as follows:

Witness #1 is employed at Griffin Hospital as a patient sitter and phlebotomist working the night shift. On the morning of April 26, 2021, he left work at about 7:15 a.m. and was driving down Division Street towards Pershing Drive from the hospital. Stopped at the intersection of Division and Atwater, he saw a police car and two young black males. He stated it appeared the men were attempting to enter the police car with the consent of the officer. He drove by slowly and one of the males pulled a small gun out of his waistband with his right hand, pointed it at him, and fired two shots. Witness #1 stopped at the bottom of Division and called his fiancée. When police arrived, Witness #1 was initially detained at gunpoint and handcuffed.

Witness #1's complete statement is included in the Appendix of this report. To access that statement, click [here](#).

Lamont Jefferson

Lamont Jefferson (DOB 7/26/2004) is McCullough's cousin and is the person with McCullough when the incident occurred (the man in the red hoodie). Candace Chavers (DOB 7/20/1982) is Jefferson's mother. She arrived on scene and was present when Jefferson was interviewed by detectives at Griffin Hospital. Before a formal statement was solicited by detectives, Chavers told her son to tell police what happened. That brief statement may be summarized as follows:

Jefferson was with McCullough when McCullough said they needed help. They ran to a police car and told the officer that they needed help. Jefferson tried to get in the police car but the officer told him to get out. As he was getting out, he heard McCullough say, "I'm hit, I'm hit."

Following that statement, detectives provided Chavers and Jefferson written notice of Jefferson's Miranda warnings. Jefferson and Chavers discussed in front of the detectives

⁷ Witness #1 has requested that his privacy be protected and that his name not be used in this report.

whether to have an attorney present for the interview but ultimately declined and Jefferson provided a statement that can be summarized as follows:

Jefferson was with "Nell," which he said is a nickname for McCullough, at about 7:00 a.m. when they left his aunt's house, which he described as a location matching a description of 120 Atwater Street. McCullough told Jefferson that they were not safe and they ran to a cop car. Jefferson did not know why they were not safe, he just followed McCullough. As he was halfway in the car, he heard gunshots and he saw McCullough on the ground screaming, "I'm hit, I'm hit. Chill. That's my little cousin." Two other officers arrived. A female officer handled him aggressively and a male officer told him to stop acting like a victim. Detectives asked Jefferson if McCullough had a gun on him. "I don't know what he had on him nothing," Jefferson said. Jefferson said he did not know who shot whom, just that as he was getting into the car McCullough was hit by gunfire. He did not see anyone get shot. Jefferson did not have a gun on him. He heard 1-2 shots and did not see his cousin "fire nothing" and he "knew damn well he didn't shoot himself."

Robin Munley

Robin Munley, of 2 Clifton Avenue, Ansonia, submitted a written statement regarding the events of April 26, 2021, to WDMCS detectives. The statement may be summarized as follows:

At around 7:00 a.m., she just made coffee in the kitchen. She was going back to her bedroom to watch the news and heard two loud bangs outside. Her bedroom window is on Division Street. She assumed it was a car backfiring. About 30 seconds later she heard four or five gunshots. She ran out of her bedroom and her husband Eric Barone was standing in the sun porch and yelled at her to "get down" multiple times. She got on the ground. She then heard yelling. She does not know what was said because her window was closed. After she got up, she heard Eric yelling out the window, "Don't move." She looked out the window and saw a black youth in a red jacket lying on the ground. He said, "don't shoot me." She saw another person on the ground in the fetal position holding his left shin. She said he was a skinny black male wearing jeans. She remembers seeing the police officer pointing his gun at the person who was shot and telling the juvenile in red not to move. She could tell by how the officer was acting that he did not want to shoot the male. She saw the officer standing five to seven feet away from the male who got shot. The officer was trying to control both people in the situation. Seven police cars then showed up. A policewoman comes over to the juvenile in red and did not use any force. She said, "we are not going to shoot you." She then calmly handcuffed him and stood him up. A clear bag containing white powder fell out of the juvenile's pocket. A police officer picked it up. The male who was shot was put in an ambulance. She walked to the corner and saw some blood on the sidewalk and a silver gun up against the curb."

Eric Barone

Eric Barone, of 2 Clifton Ave., Ansonia, submitted a written statement regarding the events of April 26, 2021, to WDMCS detectives. The statement may be summarized as follows:

He had just woken up for the day at around 7:00 a.m. His wife Robin was also home with him and they were in her bedroom. He heard two gunshots from outside his bedroom window, which was cracked open and faces the Ansonia side of Division Street. At first, he was not sure they were gunshots. He thought it was a car backfiring. He then heard four to five gunshots from what he recognized to be a 9mm gun. He has shot 9mm handguns in the past. He yelled at his wife to get down and ran over to the closed-in porch where two windows were open. He went to the window that faces Division Street and saw a police officer in uniform. The officer was facing his house and had his gun pointed at a black male who was laying on the sidewalk next to the house. The black male looked like he was about 18 but Barone didn't remember what he was wearing. He was bleeding and yelling, "I'm shot in the leg." He heard another voice belonging to a younger black male yelling, "I'm a child, I'm a child!" This younger male was wearing a red hooded sweatshirt. He started yelling at the younger male, "Don't move your hands! Keep your hands still!" The young male was laying on his back with his hands up but was moving his hands. The police officer was yelling commands like, "Keep your hands up!" The officer appeared to be stressed and distraught. You can see it in his face that he was upset that he was in that situation and had fired his weapon.

Another police officer arrived after what seemed like 3-5 minutes. This officer was a white female with dark hair. She handcuffed the young male in the red sweatshirt. The male did not resist and she handled him very nicely. The male officer went over to the other male and began to treat his gunshot wounds by putting pressure on his leg. Barone then got dressed and left the house to help. As he walked outside, he saw a silver small-caliber handgun laying on the curb about three feet from the young black male who had been shot in the leg. Another officer came from Atwater and the original officer directed that officer to go down the hill saying, "There's another one." He never saw this additional person. After seeing this small-caliber revolver he realized that was where the original two sounds I heard came from when all of this started.

Emily Leone

Emily Leone, of 117 Division Street, Ansonia, submitted a written statement regarding the events of April 26, 2021, to WDMCS detectives. The statement may be summarized as follows:

On Monday April 26, 2021, at approximately 7:12 a.m., she was stopped at the red light on Division and Atwater Streets on her way to work. She was traveling downhill on Division

coming from the area of Griffin Hospital and heading toward the area of BJ's. There was one car stopped in front of me at the red light. She observed two black males running from the corner of Atwater on her right-hand side. One of the black males was wearing a red sweatshirt. They both were running toward a police officer who was stopped at the red light on Division Street on the other side of Atwater facing uphill. While the two black males were at the police car they appeared to be behaving frantically as they were waving their arms in the air. When she drove through the intersection the police officer was talking to the males. She noticed it was a Derby officer. When she initially noticed the males at the police car, they were banging on the windows but they did not appear to be a threat and it seemed that they were looking for help. She didn't think much of it and continued past the police car down Division Street and stopped for the light at Pershing Drive. While stopped at the light, she heard at least five loud pops come from the direction of where the police car was. Her car windows were up and the radio was on but she could still hear the pops. She could tell they were gunshots because of her "lockdown" training she received for her job as a teacher. At this time she looked back toward the police car through her rear view mirror and saw the officer in full uniform pointing his gun in the direction of where the two males were running, which was back up Division toward Atwater. It appeared as if the police officer was firing his gun at the two black males and one of them got hit and fell to the ground. She thought the one who got hit was the one in the red sweatshirt but she was not sure. She was looking uphill as this occurred. At this time, she also observed the driver of the car behind her was a black male and he appeared shocked. She does not remember what kind of car he was in. She then made a right turn onto Pershing and headed toward Route 8 southbound.

Don Fink

Don Fink, of 81 Division Street, Ansonia, submitted a written statement regarding the events of April 26, 2021, to WDMCS detectives. The statement may be summarized as follows:

Fink heard about eight shots at around 7:00 a.m. About a minute after he heard the shots, he saw a black car come down the hill. Two officers approached the car and told the operator to show his hands out the window. The male complied. He was handcuffed but then later the handcuffs were removed. A female passenger was also in the car.

Officer Foley's Personnel File

Patrick Foley began employment as a patrolman with the Derby Police Department in July 2008. In November 2012, he and two other officers were the subject of an internal affairs investigation concerning the use of force against a prisoner. As a result of the investigation conducted by the Derby Police Commission, Officer Foley was disciplined for "conduct unbecoming an officer" in violation of the Derby Police Department Duty Manual. Officer Foley was suspended for 20 days without pay.

According to the facts substantiated by the Internal Affairs (IA) investigation, Foley and another officer assaulted a man, who had been arrested and was in custody, and being processed at the Derby Police Department on January 4, 2012.⁸ The IA investigation, conducted as a precursor to the commission's investigation, concluded Officer Foley and another officer violated sections of the Derby Duty Manual concerning 1) truthfulness, 2) conduct unbecoming an officer, 3) neglect of duty, and 4) using unnecessary force, and falsifying records.⁹ Misconduct was also substantiated against a sergeant who was supervising during the time of the incident.

McCullough Arrest

Connecticut State Police conducted a related but separate investigation of Cornelius McCullough's conduct on April 26, 2021. As a result of that investigation McCullough was charged, following his discharge from treatment at Bridgeport Hospital, with two crimes: possession of a pistol without a permit in violation of Connecticut General Statutes § 29-35 (a) and criminal possession of a firearm in violation of § 53a-217. Further investigation pursued by the Ansonia/Milford State's Attorney's Office resulted in additional charges being brought through an arrest warrant served May 2022: attempt to commit assault in the first degree in violation of §§ 53a-49/53a-59, illegal discharge of a firearm in violation of § 53-203, and reckless endangerment in the first degree in violation 53a-63. All these charges remain pending in Superior Court.

FINDINGS

1. On April 26, 2021, Officer Patrick Foley was on duty en route to a construction detail when he was stopped at a red light in his marked patrol cruiser north on Division Street at the intersection of Atwater and Clifton Avenues at the Derby-Ansonia border.
2. Corneilius McCullough and Lamont Jefferson ran to Foley's cruiser and McCullough banged on the driver's side window, saying he was being chased. Foley exited his cruiser to assist. McCullough was acting paranoid, was under the influence of a substance, and fidgeted with his waistband. Jefferson tried to enter the cruiser from the other side and Foley told him to stop.
3. A black Infiniti drove south past them along Division Street. As the Infiniti passed the police cruiser, McCullough walked toward the Infiniti, removed from his waistband a stolen .38 caliber

⁸ The complainant arrestee was Caucasian.

⁹ The State's Attorney for the Judicial District involved declined to bring charges against any of the officers.

Smith & Wesson revolver that he was not legally permitted to carry, and fired several shots at the Infiniti, striking it at least twice, but not injuring the occupant.

4. Officer Foley removed his duty weapon, a .40 caliber Sig Sauer pistol, and fired at McCullough, who then turned away from the Infiniti to face him, still carrying the revolver. McCullough was out of ammunition, but Foley would have not known that. Foley then fired additional rounds at McCullough until he fell to the ground. Foley discharged a total of four shots. Three struck McCullough and one struck a house at 91 Division Street.

5. Officer Foley immediately stopped firing when the threat was eliminated, called the incident in over his handheld police radio, and attempted to apply first aid to McCullough.

LEGAL STANDARD

The use of force by a police officer is governed by General Statutes §53a-22. The version of that statute in effect on April 26, 2021, in relevant part, provides:

“(a)(1) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or prevent an escape from custody.

(2) A peace officer ... who is effecting an arrest pursuant to a warrant or preventing an escape from custody is justified in using the physical force prescribed in subsections (b), (c), and (d) of this section unless such warrant is invalid and known by such officer to be invalid.

(b) Except as provided in subsection (a) ... of this section, a peace officer ... is justified in using physical force upon another person when and to the extent that he or she reasonably believes such use to be necessary to: (1) Effect an arrest or prevent the escape from custody of a person whom he or she reasonably believes to have committed an offense, unless he or she knows that the arrest or custody is unauthorized; or (2) defend himself or herself or a third person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(c) (1) ... a peace officer ... is justified in using *deadly physical force* upon another person for the purposes specified in subsection (b) of this section only when his or her actions are objectively reasonable under the circumstances, and:

(A) He or she reasonably believes such to be necessary to defend himself or herself or a third person from the use or imminent use of deadly physical force ..." (Emphasis added).

The statute further provides:

"For the purpose of evaluating whether the actions of a peace officer ... are reasonable under subdivision (1) of this subsection, factors to be considered include, but are not limited to, whether (A) the person upon whom deadly force was used possessed or appeared to possess a deadly weapon, (B) the peace officer ... engaged in reasonable de-escalation measures prior to using deadly physical force, and (C) any conduct of the peace officer ... led to an increased risk of an occurrence of the situation that precipitated the use of force," §53a-22 (c)(2).

Accordingly, a police officer is justified in using deadly physical force upon another person when the officer reasonably believes such force to be necessary to defend the officer or a third person from the use or imminent use of deadly physical force. "Deadly physical force" means "physical force that can be reasonably expected to cause death or serious physical injury." General Statutes § 53a-3(5). "Serious physical injury" means "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ." General Statutes §53a-3(4).

The reasonableness of a police officer's belief under § 53a-22 is evaluated pursuant to a subjective-objective formulation. *State v. Smith*, 73 Conn. App. 173, 185, 807 A.2d 500, cert. denied 262 Conn. 923, 812 A.2d 865 (2002). Under this test, the first question is whether, on the basis of all of the evidence, the police officer in fact honestly believed that deadly force was necessary to defend himself/herself or a third person. *Id.* If it is determined that the police officer honestly believed that deadly force was necessary, the second part of the test asks whether the police officer's honest belief was reasonable from the perspective of a reasonable police officer in the officer's circumstances. *Id.* at 198.

The United States Supreme Court has explained this test in a civil rights case: "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on scene rather than with the 20/20 vision of hindsight. ... [T]he calculus of reasonableness must embody allowance of the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

ANALYSIS

Under Connecticut law as applicable here, a determination as to whether a police officer's use of deadly force was objectively reasonable requires, in part, consideration of four questions:

1. Did the officer, as a matter of fact, actually – that is honestly and sincerely – believe that he/she or a third person was facing either the actual or imminent use of deadly force when the officer used deadly force?

2. Was that actual belief reasonable in the sense that a reasonable police officer in the officer's circumstances at the time of the officer's actions, viewing those circumstances from the officer's point of view, would have shared that belief?

3. Did the officer, as a matter of fact, actually – that is honestly and sincerely – believe that the use of deadly force was necessary to defend himself/herself or a third person from such threat?

4. Was that actual belief reasonable, in the sense that a reasonable police officer in the officer's circumstances at the time of the officer's actions, viewing those circumstances from the officer's point of view, would share the belief that deadly force was necessary?

Additionally, the reasonableness of the officer's conduct also turns on whether (1) the other person possessed a deadly weapon (or appeared to), (2) the officer attempted reasonable de-escalation measures, and (3) the situation was not precipitated by the officer's own conduct.

In this case, Officer Foley was attempting to assist McCullough who approached his cruiser in a state of paranoid distress. Inexplicably, McCullough pulled a revolver from his waistband and began firing at a passing motorist. Foley had in no way enhanced the risk of a deadly encounter. Given McCullough's active discharge of a firearm, it was too late to employ de-escalation measures. McCullough then turned to face Foley, still carrying the weapon. The question at hand is whether Foley reasonably believed McCullough was in the process of using deadly force against another or intended to use it against Foley. There is no cause to question the veracity of the account given by Foley with respect to these events. Foley's prior receipt of discipline in 2012 for an incident involving, inter alia, a false statement, does not undermine this conclusion.

Officer Foley observed McCullough using illegal deadly force against another person. A reasonable police officer, viewing the circumstances from Foley's point of view, would have shared that belief. Foley then believed McCullough was about to use deadly force against him that could result in serious physical injury or death. An immediate response was necessary to

stop the threat and deadly force was a reasonable response. A reasonable police officer, viewing the circumstances from Foley's point of view, would also have shared that belief.

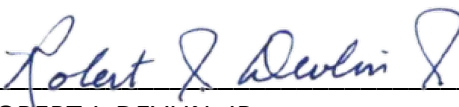
CONCLUSION

The investigation establishes that Officer Patrick Foley used deadly force against Corneilius McCullough to stop McCullough from shooting at an occupied vehicle and to prevent McCullough from shooting at him. I therefore conclude that each instance of use of force was justified under Connecticut law. The Office of Inspector General will take no further action on this matter.

Submitted, this 26th day of October 2022.



ANDREW J. SLITT
SUPERVISORY ASSISTANT STATE'S ATTORNEY



ROBERT J. DEVLIN, JR.
INSPECTOR GENERAL

ADDENDUM

Recommendations

The lack of any body worn camera (BWC) recording of this incident was unfortunate as such recording would likely have been irrefutable proof of what happened. The statutory requirement, effective July 1, 2022, that all peace officers wear BWC when interacting with the public will greatly aid Office of Inspector General investigations.

APPENDIX

Witness #1 statement

CSP Troop I

VICTIM/WITNESS STATEMENT

Date:	04/26/2021	Time Started:	10:30	Time Ended:	10:50	CFS #:	2100165569
Location:	Cruiser 108WHK			Statement taken by: BARBERO, JARED M.			

I, [REDACTED] Witness #1 Date Of Birth: [REDACTED]
of [REDACTED] Town/City: [REDACTED]

I make the following statement, without fear, threat or promise. I have been advised that any statement(s) made herein which I do not believe to be true, and which statement is intended to mislead a public servant in the performance of his/her official function, is a crime under C.G.S. section 53a-157b and is punishable by law.

I work at Griffin Hospital as a patient sitter and phlebotomist on nights, last night I was working as a patient sitter on 4/25/2021 I started work at 11pm and got off work at about 7:14 am. I was driving down Division St. toward Pershing Dr from Griffin Hospital. I was at a red light on Division at the intersection of Atwater, and saw a cop car and two young black males, they were in front of the cop car which was facing up the hill on Division st., and were trying to get into the car, it looked like the cop was trying to help them get into the car. They were at the rear passenger door, and the door was open. I started to drive slowly to look and see what was going on, one of the kids pulled a small gun out of his waistband with his right hand and pointed it at me and fired 2 shots. So then I was swerving and swerving, and stopped at the bottom of Division in front of a gas station because I didn't hear any more shots. I stopped and called my fiance. I just stayed in my car and waited for the police to come, when they arrived they told me to stay in the car, and pointed a gun in at me, and told me to get out of the car. I was at the back of the car, I was put in handcuffs for a minute and told I was being detained, until a cop recognized me and said, "you're good." I was taken out of handcuffs, gave them my ID, and stayed by my car until my fiance got here.

By affixing my signature to this statement, I acknowledge that I have read it and / or have had it read to me and it is true to the best of my knowledge & belief.

Name of Person making Statement:	Signature of Person making Statement:	Date:
[REDACTED]	[REDACTED]	04/26/2021
Parent/Guardian Name:	Parent/Guardian Signature:	Date:

Personally appeared the signer of the foregoing statement and made oath before me to the truth of the matters contained therein. If notarized, endorse here:

Notarized By: /DET JARED M. BARBERO/ 04/26/2021
Name: Signature: Date Signed:

Witness Name:	Witness Signature:	Date: