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FOR IMMEDIATE RELEASE

May 3, 2019

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Mercer County Prosecutor's Office Concludes Use of Force was Justified in February 18, 2017 Incident in Trenton

The Mercer County Prosecutor's Office (MCPO) has completed its investigation into the February 18, 2017 use of force by a detective of the Trenton Police Department, and has concluded that the use of force was legally justified. The MCPO 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, 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 the MCPO's determination that there were no material facts in dispute and that the use of force by the officer in this case was justified. The Attorney General's Office concurred with the MCPO's conclusion to forego presentation of this matter to the grand jury.

The incident occurred on February 18, 2017, in the area of 127-129 Boudinot Street, in the city of Trenton. At approximately 9 p.m., the Mercer County Homicide Task Force (HTF) was activated to investigate an officer-involved shooting that occurred in the indicated area. No one was injured during the incident. The investigation, which encompassed statements of officers, witnesses, radio transmissions, photographs and physical evidence, revealed the following facts:

At approximately 8:30 p.m., two detectives with the Trenton Police Department (TPD) Street Crimes Unit were working in the area of North Hermitage Avenue when they observed a group of males in front of the First Stop Mini Market located at 37 North Hermitage Avenue.

The detectives were both wearing uniforms with police identifiers and utilizing a marked police vehicle. One of the males, later identified as Dwayne Derry, observed the officers and immediately grabbed his waistband and walked into the mini market. The detectives observed Derry's actions, drove around the block, and parked at the corner of Boudinot Street and North Hermitage Avenue as they continued their surveillance of the mini market. Shortly thereafter, Derry exited the mini market and began talking with the other males who were standing in front of the store. At that time, one of the other males standing in front of the market started pointing at the police vehicle. The detectives then drove closer to the front of the store. During this time, Derry looked in the direction of the officers and immediately grabbed his waistband again and walked back into the market. Based on his training and experience, Detective 1 believed that Derry's movements were consistent with someone concealing a weapon. Detective 1 then exited the patrol car and followed Derry into the store. Detective 2 followed Detective 1 into the store after parking the patrol car.

Once inside the store, Detective 1 observed Derry make a quick left turn heading down one of the store aisles. As Detective 1 approached Derry, Derry began hunching over, blading his body away from Detective 1 and looking toward the products on the shelves. Because Detective 1 was concerned that Derry was possibly concealing a firearm, Detective 1 identified himself as a police officer and ordered Derry to show him his hands. In response to this command, Derry turned around and, again, began reaching in the area of his waistband. Detective 1 told Derry to stop reaching for his waistband, however, Derry refused to comply. At that time, Detective 1 grabbed a hold of Derry's wrist in an attempt to stop him from reaching into his waistband. As Detective 1 grabbed Derry's wrist, Derry began to pull away. At that time, Detective 1 advised Detective 2 that Derry was being arrested for obstruction. Detective 2 assisted in attempting to gain control of Derry by grabbing his right arm while Detective 1 grabbed Derry's left arm. Derry continued pulling away from the detectives as they were attempting to get his hands behind his back. Because Derry was resisting, Detective 2 attempted to radio officers for assistance. As Detective 2 reached for her radio, Derry pulled away and broke free from her grasp. Detective 1 then attempted to control both of Derry's arms by grabbing him from behind, however, Derry was able to pull away from him. Detective 1 then grabbed Derry's jacket, but Derry broke free from Detective 1's grasp. Derry ran toward an exit at the rear of the market and fled down Gilbert Alley.

Detective 1 chased Derry through the back door while Detective 2 exited through the front door to retrieve the police vehicle and follow Derry. As Detective 1 pursued Derry on foot to the area down Gilbert Alley, he continued to give Derry commands to stop running. Derry continued running until reaching the area of 127-129 Boudinot Street, where Derry fell to the ground. When Derry fell, Detective 1 sprayed him with mace for approximately two to three seconds. Upon seeing that the mace had no effect on Derry, Detective 1 grabbed Derry's wrists from behind. However, Derry continued pulling his hands away while reaching toward his waistband. Detective 1 continued struggling with Derry until Derry was able to position himself on top of the detective. Detective 1 pushed Derry away as Derry stood over the detective. Detective 1, who remained on the ground on his back, then drew his weapon, and upon doing so, observed Derry lift up his shirt. At that time, Detective 1 observed a shiny object, which he believed to be a handgun. Detective 1 fired one shot from his duty weapon

while still on the ground. No one was struck by the detective's projectile. Detective 1 then attempted to fire his duty weapon a second time, but his weapon jammed. At that point, Derry started running between two houses in the direction of Gilbert Alley. Detective 1 tried to radio his position, but found that he could not get a signal and could not hear anyone talking on the radio.

Officers then initiated a search for Derry, which lasted approximately 20 minutes. While the search was being conducted, Derry emerged from the area between 131 and 133 Boudinot Street after being observed by Detective 2. A foot pursuit ensued and Derry was eventually apprehended in the area of the 700 block of Edgewood Avenue by a Trenton police sergeant. Detective 2 recovered a bag of marijuana in the area where Derry was hiding after the foot pursuit.

Derry eventually pleaded guilty to third-degree resisting arrest in September 2017. During the plea colloquy, Derry admitted that he was inside the First Stop Mini Market on February 18, 2017. He stated that an officer from the Trenton Police Department entered the market and that he knew this individual was a police officer. Derry also stated that the officer attempted to arrest him and that he used physical force to resist the officer when the officer tried to put his hands behind his back. In December 2017, Derry was sentenced to time served with 216 days in the county jail, and all mandatory fines and penalties.

Applying the Directive to the undisputed material facts outlined above, the use of force by Detective 1 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.

The Detective believed that discharging his weapon was necessary for the protection of his life. An independent analysis of the undisputed material facts led to the determination that the Detective's beliefs were reasonable, and the use of 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.

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