

IN RE:

THE FIFTH DAUPHIN COUNTY
INVESTIGATING GRAND JURY

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. CP-22-MD-0009-2008

ORDER OF COURT

AND NOW, this 28th day of August, 2009;

IT IS HEREBY ORDERED that Report Number 1 is accepted and shall be filed as a public record with the Dauphin County Clerk of Court pursuant to 42 Pa.C.S. §4552. The Report may be inspected by any person. After a review of the record, the Court makes a finding that the Report is based upon facts received in the course of the various investigations authorized by this Court and is supported by a preponderance of the evidence.

BY THE COURT:

Todd Hoover

TODD A. HOOVER.
SUPERVISING JUDGE

RECEIVED
OFFICE OF
CLERK OF
COURTS
2009 SEP 14 AM 9:43
DAUPHIN COUNTY
PENNA

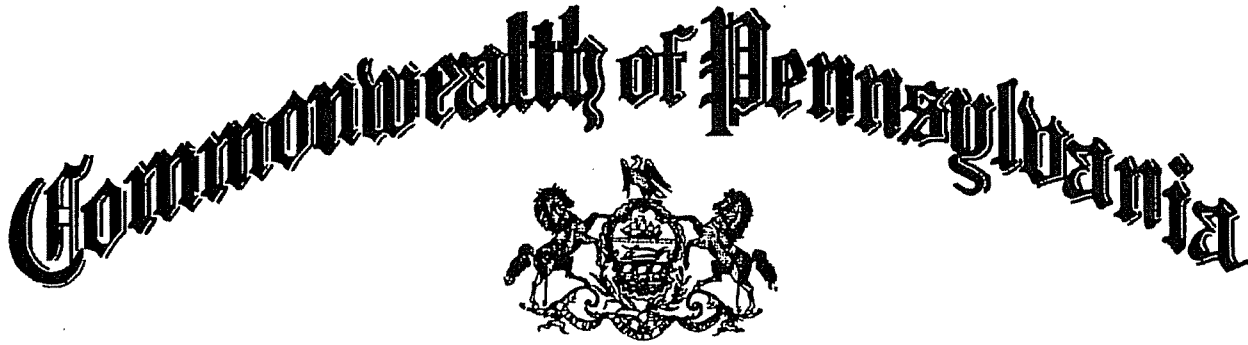
DISTRIBUTION:

Francis T. Chardo, First Assistant District Attorney (c)

Certified: A True Copy

SEP 14 2009

Lowell White
Clerk of the Court



**THE FIFTH DAUPHIN COUNTY
INVESTIGATING GRAND JURY**

IN RE: : IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
THE FIFTH DAUPHIN COUNTY :
INVESTIGATING GRAND JURY : NO. CP-22-MD-0009-2008

TO THE HONORABLE TODD A. HOOVER, SUPERVISING JUDGE:

REPORT NO. 1

We, the Fifth Dauphin County Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court and testifying before us and from observations made during duly scheduled sessions of the grand jury. We make the following findings of fact upon proof by a preponderance of the evidence and issue these recommendations for legislative, executive or administrative action in the public interest. So finding with not fewer than twelve concurring, we do hereby make Report to the Court.

DATED: Aug. 26, 2009

Foreman - Fifth Dauphin
County Investigating Grand Jury

Anthony J. Donnangelo

RECEIVED
OFFICE OF
CLERK OF COURTS
2009 SEP 14 AM 9:45
DAUPHIN COUNTY
PENNA

INTRODUCTION

We, the members of the Fifth Dauphin County Investigating Grand Jury, having received evidence pertaining to matters in Dauphin County, Pennsylvania, pursuant to all Notices of Submission of Investigation made to this grand jury, do hereby make the following findings of fact and recommendations.

FINDINGS OF FACT

Marc David Moule is employed as a patrol officer with the Harrisburg Bureau of Police. He has been employed with that department for three years and had served in the United States Army as a military policeman for six and a half years prior to joining the Harrisburg Police Bureau. On June 17, 2009, Officer Moule was working in full uniform in a marked police cruiser on the 10 p.m. to 6 a.m. shift. Moule was operating without a partner, patrolling the western portion of the Allison Hill section of the city of Harrisburg. Moule was armed with his duty weapon, a Sig Sauer .45 caliber semi-automatic pistol.

During his shift, Moule heard a radio call regarding a police pursuit related to a shots fired call from the 500 block of Woodbine Street. To back up officers involved in the pursuit, Moule drove to the area of Sixth and Division Streets using emergency lights and sirens. After arriving at Sixth and Division Streets, based on radio traffic, Moule was under the impression that two suspects had been captured, but that two may still be at large. Moule had his four-way flashers and parking lights on. It was raining heavily.

Officer Moule heard screaming on the radio and he exited his car. He then saw three or four officers running in Moule's direction with guns drawn while yelling, "get on the ground, get on the ground." Moule then looked to his right and saw two suspects standing next to each other about forty feet away from Moule. Moule drew his weapon, aimed it at them, and shouted, "police, get on the ground." One of the suspects ran past Moule. The other individual, later learned to be Leonard Howze, ran directly at Moule at full speed. With gun pointed at Leonard Howze, Moule commanded, "get on the ground." Despite three or four commands to get on the ground, Leonard Howze continued to run towards Moule. Moule indicated that he was in fear for his life and fired one shot at Howze.

Officer Moule testified that he did not see a weapon in Howze's hand but Moule could not see Howze's hands such that he could not determine whether or not Howze was armed. Moule indicated that his understanding that the individuals being sought had been involved in a shooting that night contributed to his concern that the suspect may be armed. Moule indicated that he was concerned that Howze was running directly at him in spite of commands to get to the ground. According to Moule, he had been involved in approximately fifty foot pursuits but had never had a suspect run directly at him instead of away from him.

Officer Moule had been involved in a previous fatal shooting incident that occurred on September 23, 2007. The grand jury had the benefit of hearing Moule's taped interview, given on September 24, 2007, regarding that shooting. The grand jury also received testimony from Detective Brian Walborn regarding his investigation of the 2007 shooting.

Lamar Howze is the brother of the Leonard Howze and was one of the other occupants of the vehicle from which Leonard Howze fled. Lamar Howze testified before the grand jury, but repeatedly invoked his privilege against self-incrimination. Lamar Howze would not give any information about his conduct on the night in question or his communication with Leonard Howze after the incident.

Leonard Howze testified before the grand jury. Leonard Howze ingested marijuana approximately an hour before the shooting incident. The effects of marijuana could have affected his judgment at the time of the incident. Howze described his injuries that resulted from the June 17 shooting. Howze was shot one time in the face. A small part of the bullet is still lodged in his head. Howze suffered injuries as a result of the shooting. Having been treated by a plastic surgeon, Howze does not have any noticeable scars on his face as a result of the shooting. At present, he produces less saliva than before the shooting but is able to speak and swallow without assistance. He experiences a slight tingling in his head as a result of the shooting. He did not suffer any serious brain injury as a result of the shooting. Leonard Howze remembers running from the car and hiding from police after that. However, Leonard Howze testified that has no recollection of the shooting itself. Leonard Howze identified the other occupants of the vehicle in which he was riding as Lamar Howze, Anthony Arrington, and William Pierce. Leonard Howze identified Lamar Howze as the driver of the vehicle.

During the one-year period between June 17, 2008 and June 17, 2009, the Harrisburg Bureau of Police responded to 947 shots fired calls. During the same period, Officer Marc Moule responded to 50 shots fired calls. Both these numbers do not include those incidents in which a person was actually wounded from gunfire.

RECOMMENDATIONS

Based on the above findings of fact, a majority of the Fifth Dauphin County Investigating Grand Jury makes the following recommendations for legislative, executive or administrative action in the public interest.

1. The grand jury recommends that no charges be brought against Marc Moule as a result of his conduct on June 17, 2009.
2. The grand jury recommends that the Harrisburg Bureau of Police explore the possibility of equipping its patrol officers, after appropriate training, with Tasers. The grand jury further recommends that officers receiving Taser devices receive mandatory annual retraining on their use and the permissible use of force. It is unclear whether the availability of this less than lethal option would have altered the result in the June 17, 2009 incident.
3. The grand jury recommends that the Harrisburg Bureau of Police explore the possibility of equipping all its patrol cars with audio and video equipment as permitted by 18 Pa. C.S. §5704(16). However, the grand jury notes that based on the position of Officer Moule's car at the time of the incident, it is unlikely that a video recording in his car would have captured the event.