August 9, 2024

Report on the Investigation into the Death of Billy Lee

INTRODUCTION

New York Executive Law Section 70-b authorizes the Office of the Attorney General, acting through its Office of Special Investigation (OSI), to investigate, and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or a peace officer, as defined. When OSI does not seek charges, Section 70-b requires OSI to issue a public report. This is the report of OSI's investigation of the death of Billy Gator Lee, who was shot on May 13, 2022, at the corner of Hunts Point Avenue and Seneca Avenue in the Bronx, by members of the New York City Police Department (NYPD) and died of his wounds.

OVERVIEW

On the afternoon of May 13, 2022, Mr. Lee drove with a friend, KB,[1] to Hunts Point Deli Grocery, a block away from where the shooting occurred. He double-parked and, before entering the deli to purchase beer, appeared to argue with men standing outside the deli. Mr. Lee entered the deli, and, as he was paying for beer, said, "I have a big gun. God damn fuck. Big shit." When Mr. Lee left the deli he again appeared to argue with men standing outside. He then went to his parked truck and began to walk back toward the deli with what appeared to be a gun in his hand. KB blocked him and pushed him back toward the truck. The two men got into the truck and drove off around the block.

After circling the block twice, Mr. Lee parked his truck a block from the deli, at the corner of Hunts Point Avenue and Seneca Avenue. When he got out he took an object that appeared to be a gun, but was in fact an air pistol, from the truck and headed toward the deli on foot with the pistol visible in his right hand. NYPD Detective Ferdi Memedoski and NYPD Sergeant Elvin Pichardo, and other NYPD officers were in the area for a narcotics operation and in plain clothes. Detective Memedoski and Sergeant Pichardo saw Mr. Lee with what appeared to be a gun in his hand and Detective Memedoski yelled at Mr. Lee to drop the gun. Mr. Lee fired the air pistol at Detective Memedoski, and Detective Memedoski and Sergeant Pichardo fired at Mr. Lee. Mr. Lee was struck and taken to Lincoln hospital, where he was declared dead. The air pistol was recovered at the scene.

Having thoroughly investigated the facts and analyzed the law, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly force against Mr. Lee was justified and, therefore, closes the matter with the issuance of this report and will not seek charges.

FACTS

Video

The shooting occurred in a residential area of low- to mid-rise apartment buildings with small businesses on the ground level.

[1] OSI does not publish the names of civilian witnesses.

The officers involved in the undercover narcotics operation did not have body-worn cameras or dashboard cameras.

On the day of the shooting at 6:46 pm, an NYPD pole camera at the corner of Hunts Point Avenue and Gilbert Place captured Mr. Lee's black pick-up truck traveling north on Hunts Point Avenue. It showed that Mr. Lee double-parked his truck at the corner of Hunts Point Avenue and Gilbert Place and that he and his passenger, KB, got out. Mr. Lee stopped to speak with a group of men on the sidewalk while KB entered Hunts Point Deli. The conversation on the sidewalk appeared to turn heated as Mr. Lee and the men began making hand gestures. KB left the deli and spoke with the men in front of the deli, and Mr. Lee entered the deli.

Security videos from the deli captured Mr. Lee entering at 6:47 pm. He stayed inside the deli for about two minutes and purchased a dozen bottles of Corona beer. As Mr. Lee was paying at the register at 6:48 pm, store video, which had audio, captured him saying, "I have a big gun. God damn fuck. Big shit," before leaving the deli. [2]

Screen capture of the NYPD pole camera showing Mr. Lee (red outline) and KB (yellow outline) arguing with men outside the deli. The rear brake lights of Mr. Lee's black pick-up truck can be seen at the bottom left corner(green outline).

Mr. Lee left the deli, and the NYPD pole camera across the street showed that Mr. Lee and KB argued with men in front of the deli for several minutes before Mr. Lee walked toward his truck and off camera at 6:52 pm. A moment later, the NYPD pole camera showed that Mr. Lee walked to the

[2] Deli video. Timestamps from different video sources are not synchronized.

crosswalk of Gilbert Place with what appeared to be a gun in his right hand. The crowd of men in front of the deli dispersed and KB pushed Mr. Lee back toward his truck. Mr. Lee and KB walked in the direction of the truck and disappeared from camera view, and the truck took off at 6:53 pm.

Screen capture from the NYPD pole camera showing Mr. Lee walking back to his truck holding what appeared to be a gun in his right hand, with KB walking behind him.

Security videos from buildings on Hunts Point Avenue and Seneca Avenue and the NYPD pole camera showed that Mr. Lee's truck circled the block twice – traveling from Hunts Point Avenue to Seneca Avenue to Faile Street to Gilbert Place – before he stopped the truck to let KB get off at the corner of Gilbert Place and Hunts Point Avenue. Mr. Lee continued driving to the corner of Hunts Point Avenue and Seneca Avenue.

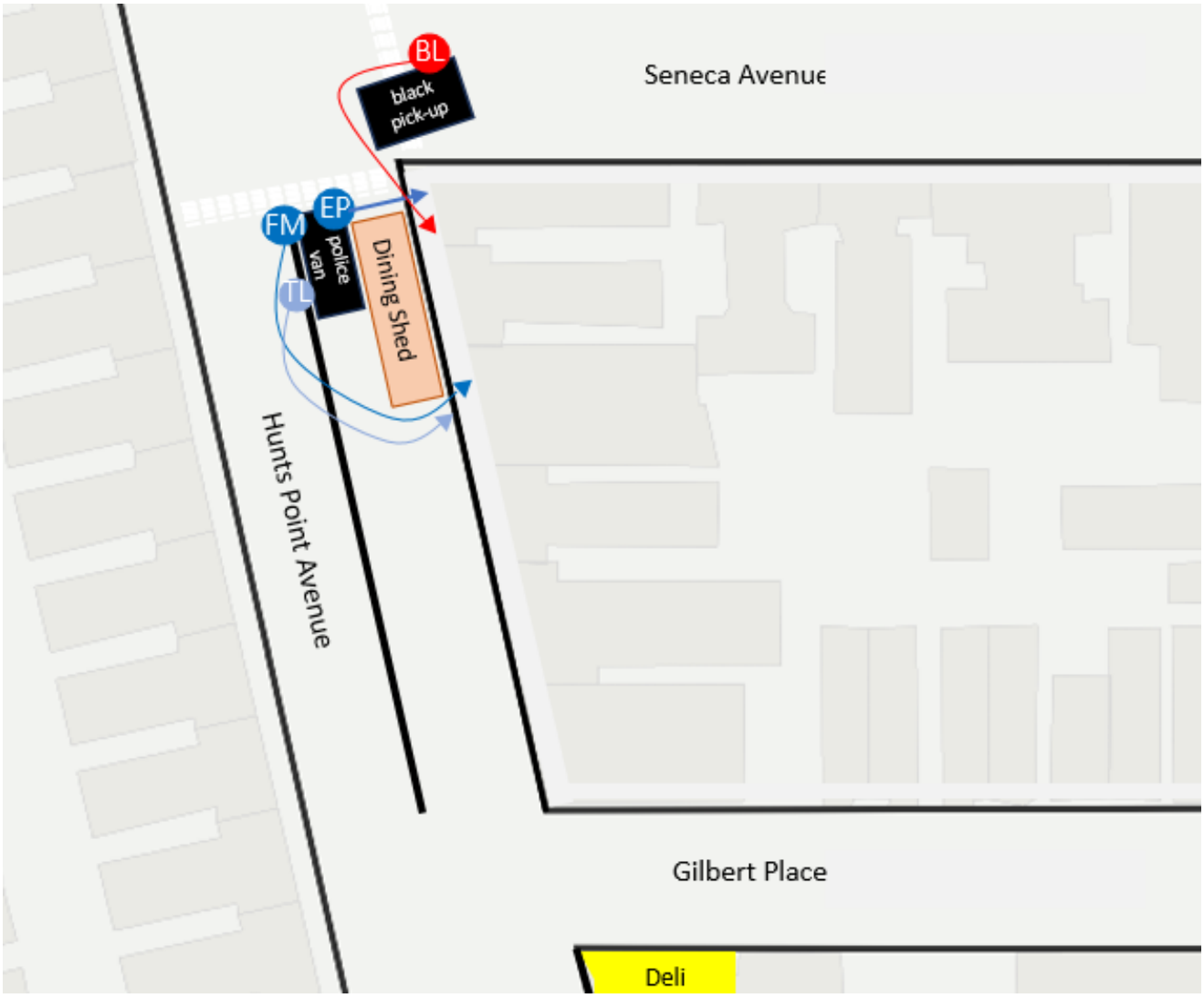
Map showing how Mr. Lee drove around the block. The yellow star marks Hunts Point Deli, and the red icon marks the location of the shooting.

Security videos from 1200 Seneca Avenue and 871 Hunts Point Avenue showed that Mr. Lee parked on the crosswalk of Seneca Avenue at 7:00:17 pm as KB arrived on foot from the direction of Gilbert Place.[3] Video showed that an unmarked NYPD police van driven by Detective Memedoski traveled behind the truck, stopping at the traffic light at the corner of Hunts Point Avenue and Seneca Avenue at 7:00:42 pm. At 7:00:39 pm video showed that Mr. Lee spoke to KB and made hand gestures while rummaging through the back of his truck. Mr. Lee leaned into the driver's seat of the truck and then walked along Hunts Point Avenue toward Gilbert Place while KB got into the truck's driver's seat. Video from 1200 Seneca Avenue showed that Mr. Lee held what appeared to be a gun in his right hand as he approached the sidewalk at 7:00:52 pm.

[3] 1200 Seneca Video; 871 Hunts Point Video.

Screen capture of the video from 1200 Seneca Avenue showing Mr. Lee walking onto the sidewalk of Hunts Point Avenue, holding what appears to be a gun in his right hand and a black towel in his left hand. Mr. Lee's black pick-up truck is on the right edge of the screenshot while the unmarked NYPD van is behind the dining shed at the top of the screenshot.

At 7:00:53 pm, video showed that Sergeant Pichardo, Detective Memedoski, and Detective Theresa Lustica, all in plain clothes, rushed out of the unmarked police van: Sergeant Pichardo left from the front passenger door of the van with his gun in his right hand and his radio in his left hand; Detective Memedoski left the van from the driver's seat and circled around the back of the van and an outdoor dining shed on the side of Hunts Point Avenue; Detective Lustica got out from the driver's side rear door and followed behind Detective Memedoski; Sergeant Pichardo approached Mr. Lee from the corner of Hunts Point Avenue and Seneca Avenue while talking on the radio



A diagram of the positions of Mr. lee (BL), Sergeant Pichardo (EP), Detective Memedoski (FM), and Detective Lustica (TL) at the time of the incident.

Video showed that Mr. Lee raised the pistol toward the dining shed (where video moments later showed Detective Memedoski and Detective Lustica) before he turned and ran back toward his truck and pointed the pistol in the direction of Sgt. Pichardo; video showed that Sgt. Pichardo fired his gun at 7:00:58 pm. Mr. Lee fell to the ground face down and appeared to push the air pistol away. Sergeant Pichardo put his right foot on Mr. Lee's waist and holstered his gun; he removed his foot when Detective George Colon arrived and handcuffed Mr. Lee. Detective Lustica and Detective Memedoski removed KB from Mr. Lee's truck and handcuffed him at 7:01:26 pm.[4]

Detective Lustica began chest compressions on Mr. Lee at 7:03 pm. Additional NYPD officers arrived at 7:08 pm and took over chest compressions. A Fire Department ambulance arrived at

[4] 868 Hunts Point Video.

7:09 pm and transported Mr. Lee to Lincoln Hospital at 7:15 pm. The ambulance arrived at the Emergency Department at 7:21 pm and Mr. Lee was pronounced dead at 7:35 pm.

Interviews

OSI interviewed KB, who said that he and Mr. Lee worked together in Brooklyn during the day. After they finished work, they traveled together in Mr. Lee's truck to receive their wages. After being paid, Mr. Lee agreed to drop KB off in the Bronx. On their drive from Brooklyn to the Bronx, KB and Mr. Lee stopped at two bars and had some alcoholic drinks. They then went to Hunts Point Deli for Mr. Lee to purchase beer. KB said he didn't know Mr. Lee had a gun and that he stayed inside Mr. Lee's truck the entire time they were at Hunts Point Deli (which is contradicted by video, as described above).

OSI interviewed Sergeant Elvin Pichardo, UC, and Detectives Ferdi Memedoski, Theresa Lustica, and George Colon.

UC told OSI they were part of an NYPD team conducting a narcotics operation on the day of the shooting. UC was at Hunts Point Deli when they heard the man later identified as Mr. Lee complain about people blocking the entrance to the store. UC saw an argument between Mr. Lee and other men and heard Mr. Lee and one other man, wearing a white tank top, each say he would get a gun. The argument appeared heated, so UC relayed the information and the men's descriptions to the team and left the area as UC was not wearing a bulletproof vest. UC noticed Mr. Lee's truck, as it was doubled-parked, but did not know it belonged to him. After UC left the deli area, UC stayed nearby with plain-clothes officers in an unmarked NYPD car and heard multiple shots. UC said UC didn't know the team was involved and assumed the shots came from the two men who mentioned getting their guns. UC did not go to the scene because UC did not have a bulletproof vest.

Detective Memedoski told OSI he was in plain clothes with his shield around his neck. He was the driver in an unmarked NYPD van, with Sergeant Pichardo as the front passenger and Detective Lustica as a rear passenger. Detective Memedoski parked on Faile Street facing Gilbert Place, while UC was on the corner of Hunts Point Avenue and Gilbert Place. Detective Memedoski said he heard over the radio that there was a verbal dispute and that someone mentioned getting a gun. He drove the unmarked NYPD van to Gilbert Place facing Hunts Point Avenue to follow the person who mentioned getting a gun. Detective Memedoski saw a black pick-up truck circling the block multiple times before stopping at the corner of Hunts Point Avenue and Gilbert Place to let out a passenger, later identified as KB, who waved the driver, later identified as Mr. Lee, toward Seneca Avenue. Detective Memedoski said that Sergeant Pichardo told another unmarked NYPD car to take their spot and instructed Detective Memedoski to follow the black pick-up truck.

Detective Memedoski said he saw KB walking outside and saw the truck stop at the corner of Hunts Point Avenue and Seneca Avenue. Detective Memedoski stopped the van on Hunts Point Avenue, just before the corner. Detective Memedoski saw Mr. Lee get out of the truck and KB get back into the truck. Mr. Lee appeared frustrated and was shuffling plastic bins in the trunk. Mr. Lee then returned to the driver's side; Detective Memedoski saw Mr. Lee come out with a black towel in one

hand and a gun in the other hand. Detective Memedoski jumped out of the NYPD van and went behind the van and past an outdoor dining shed. He caught up to Mr. Lee as he was walking toward Gilbert Place. Detective Memedoski yelled "police" and told Mr. Lee to drop the gun. He saw Mr. Lee raise the gun and shoot, felt what appeared to be a bullet fly by his face and returned fire. Detective Memedoski took cover briefly and then saw Mr. Lee on the ground. He removed KB from the pick-up truck and handcuffed him.

Sergeant Pichardo told OSI that he was in the front passenger seat of an unmarked NYPD van with Detectives Memedoski and Lustica. Sergeant Pichardo was wearing a bulletproof vest with "POLICE" written on the front and his shield out. The unmarked NYPD van was parked on Faile Street when UC was at the corner of Hunts Point Avenue and Gilbert Place. Sergeant Pichardo said UC had relayed information that a man in a white tank top said he was going to get his gun. Sergeant Pichardo instructed UC to leave the block for safety reasons because UC did not have protective gear.

Sergeant Pichardo observed a man in a white tank top go into a building on Gilbert Place. He kept watch to see if the man came back out with a gun and noticed a black pick-up truck speed past him several times, which aroused his suspicion. Sergeant Pichardo instructed another unmarked NYPD car with plain-clothes detectives to watch the building while his van followed the black pick-up truck. Sergeant Pichardo saw the truck drive down Gilbert Place and stop at the corner of Gilbert Place and Hunts Point Avenue; he saw a man, later identified as KB, get out from the passenger side and walk down Hunts Point Avenue in the direction of Seneca Avenue without anything in his hand. The truck turned right onto Hunts Point Avenue and stopped at the next corner, at Seneca Avenue. Sergeant Pichardo saw the driver, later identified as Mr. Lee, get out of the truck, rummage through the back trunk, and return to the driver's seat before circling around the back of the truck with what appeared to be a gun wrapped in fabric. Sergeant Pichardo said he put over the radio that he spotted a gun and got out of the unmarked van behind Mr. Lee, who was walking on the sidewalk of Hunts Point Avenue toward Gilbert Place. Sergeant Pichardo lost sight of Mr. Lee momentarily as his view was obstructed by an outdoor dining shed. As he was walking around the outdoor dining shed, he heard Detective Memedoski say, "Police, drop the gun," and heard gunfire. Sergeant Pichardo said he also shouted "police" and saw Mr. Lee with a gun pointed at him, causing him to discharge his firearm at Mr. Lee, who fell to the ground. Sergeant Pichardo said he instructed Detective Lustica to handcuff KB, who was inside the pick-up truck.

Detective Lustica told OSI that she heard UC put over the radio that a black man wearing a white tank top was going to get a "hammer."[5] Detective Memedoski pulled the car onto Gilbert Place where they saw two men go into a building, one fitting the description of the man in the white tank top. She noticed a black pick-up truck looping around very fast and stopping at the corner of Gilbert Place and Hunts Point Avenue every time. She was unable to see inside the black pick-up truck because the windows were tinted. Detective Memedoski followed the truck, where the driver, later identified as Mr. Lee, let out his passenger, later identified as KB, at the corner of Gilbert Place and

[5] A "hammer" is a common street slang for gun.

Hunts Point Avenue. Detective Lustica saw the truck follow KB as he walked down Hunts Point Avenue; at the corner of Hunts Point Avenue and Seneca Avenue Mr. Lee got out of the truck and rummaged around in the trunk as if he was looking for something. Mr. Lee returned to the driver's seat and came out with something wrapped in a black towel. Mr. Lee unwrapped it and Detective Lustica could see a gun. Detective Memedoski said, "Gun," and someone put it over the radio. Detective Memedoski got out of the van and went around the outdoor dining shed; Detective Lustica followed behind him. She heard Detective Memedoski yell, "Police," and direct Mr. Lee to put the gun down. She heard shots fired and took cover. When she came around the dining shed, the driver was on the ground. She and Detective Memedoski removed KB from the truck and cuffed him. She flipped Mr. Lee over so he was facing up and began performing CPR even though she did not feel a pulse.

Detective George Colon told OSI that he was in an unmarked NYPD car with two other plain-clothes detectives. He said he heard Sergeant Pichardo put over the radio that UC overheard an argument where someone said they were going to get a gun. He noticed a truck driving around the block really fast, passing them twice. Detective Colon said Sergeant Pichardo told his car to cover a building where two people entered, to possibly retrieve a gun, while the van Sergeant Pichardo was in followed the truck. Detective Colon said he heard about a gun over the radio and ran over to where Sergeant Pichardo was and saw Mr. Lee lying on the ground with a gun in front of him. He handcuffed Mr. Lee, who appeared to be unresponsive, and called for an ambulance.

Autopsy

Dr. Jeremy Stuelpnagel of New York City's Office of Chief Medical Examiner conducted an autopsy of Mr. Lee on May 14, 2022. Mr. Lee was struck by four gunshots: one penetrating gunshot to the chest, from which Dr. Stuelpnagel recovered a bullet; two perforating gunshots, to the abdomen and right flank; and one gunshot that grazed the left arm and chest.[6] Dr. Stuelpnagel determined the cause of death to be the penetrating gunshot to the chest, with injury to the heart and aorta. A toxicology examination of Mr. Lee's blood showed a blood alcohol content (BAC) of 0.550%[7] with no other drugs found in his system.

Ballistics

[6] A "penetrating" gunshot is one in which the projectile remains in the body. A "perforating" gunshot is one in which the projectile goes through the body; a perforating gunshot creates an entry wound and an exit wound. A "graze" is a gunshot that does not penetrate the body.

[7] A urine analysis showed Mr. Lee's BAC to be 0.293% at the time of his death. Dr. Stuelpnagel explained that alcohol takes more time to travel to the urine than the blood, so that a person who has only begun drinking will have a higher alcohol content in the blood than in the urine; once a person has stopped drinking, the reverse may be true. For comparison, under New York Vehicle & Traffic Law Section 1192, a person is "per se" guilty of driving while intoxicated if BAC is 0.08% (Subdivision 2) and guilty of aggravated driving while intoxicated if BAC is 0.18% (Subdivision 2-a), meaning that Mr. Lee's BAC was more than three times the BAC that defines aggravated driving while intoxicated.

NYPD's Crime Scene Unit went to the scene and recovered 10 cartridge casings, two plastic projectiles, and one air pistol containing one plastic projectile. Detective Robert Simms examined Sergeant Pichardo's and Detective Memedoski's department issued firearms, and, according to the state of the load, determined that each of them fired five shots. Criminalist Jo-Ann Conzone tested the air pistol recovered from the scene and found it to be operable in discharging plastic projectiles; it was not a firearm. As shown in the photo, the air pistol had no markings or colors indicating that it was not a firearm.[8] Detective Michael Caridi tested the bullet recovered from Mr. Lee's chest and found that it was discharged from Sergeant Pichardo's gun.

Pictured above is the air pistol recovered from the scene, the plastic projectile recovered inside the air pistol (WVIB), and two plastic projectiles recovered on the ground at the scene (WV16 and WV17).

LEGAL ANALYSIS

New York Penal Law Article 35 sets forth the defense of justification to crimes involving the use of physical force. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. If a defense is raised at trial, the burden is on the prosecutor to disprove it beyond a reasonable doubt, PL 25.00(1). The defendant is entitled to have the jury instructed on the defense of

[8] Article 39-B of the New York General Business Law prohibits the possession of imitation guns unless they are brightly colored or transparent.

justification even if the defendant does not offer evidence, as long as the defense is implied by the prosecutor's evidence. *People v. Steele*, 26 NY2d 526 (1970).

In this case, Sergeant Pichardo and Detective Memedoski used deadly physical force. Under PL 10.00(1) "deadly physical force" is "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Under PL 10.00(10) "serious physical injury" is "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."

PL 35.30 is the provision defining justification when a police officer or peace officer uses force to effect or attempt to effect an arrest. PL 35.30(1) provides:

> "A police officer or a peace officer, in the course of effecting or attempting to effect an arrest … of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest … or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that … (c) regardless of the particular offense which is the subject of the arrest … the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force."

As the provision states, officers who use deadly physical force are justified when they reasonably believe deadly force is necessary to defend themselves or another against the imminent use of deadly physical force. "Reasonable belief" means that a person actually believed, "honestly and in good faith," that physical force was about to be used against them and that physical force was necessary for self-defense (subjective component), and it means that a "reasonable person" under the same "circumstances" could have believed the same (objective component). *People v. Goetz*, 68 NY2d 96 (1986); *People v. Wesley*, 76 NY2d 555 (1990). Therefore, before using deadly force in self-defense, (a) the officer must honestly and in good faith believe deadly force was about to be used against them or another person and that deadly force is necessary for self-defense, and (b) a reasonable person under the same circumstances could believe the same.

When an officer is justified in using deadly physical force pursuant to PL 35.30, the officer does not have a duty to retreat, PL 35.15(2)(a)(ii).

Based on the evidence in this investigation, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly physical force was justified under the law.

Based on communication from UC, officers were aware that two men had argued and threatened to get guns. Officers attempted to follow one of the men, described as wearing a white tank top,

and then observed the pick-up truck Mr. Lee was driving circling the block. Turning their attention to the pick-up truck, officers saw Mr. Lee get out and take an air pistol, which appeared to be a firearm, from the truck and walk along Hunts Point Avenue toward the site of the argument. At that point, the officers had reasonable cause to believe that Mr. Lee was committing Criminal Possession of a Weapon in the Second Degree, a class C violent felony[9] and began to follow him.

When Mr. Lee fired at Detective Memedoski, who was in plain clothes but had his NYPD shield out and yelled, "Police," the officers had reasonable cause to believe that Mr. Lee was committing Attempted Aggravated Assault on a Police Officer, a class C violent felony[10] or, unaware that Detective Memedoski was a police officer, Attempted Assault in the Second Degree, a Class E felony.[11]

Based on their interviews, the discharging officers believed Mr. Lee was using deadly physical force against them and, under the circumstances, their belief was reasonable. Because Mr. Lee did not drop the gun when the officers identified themselves as police and ordered him to drop the gun, and because Mr. Lee fired at them, the officers reasonably believed that deadly physical force was necessary to prevent Mr. Lee from using deadly physical force.

As a result, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that the discharging officers were justified in firing at Mr. Lee. Therefore, OSI will not present evidence to a grand jury and closes the matter with the issuance of this public report.

[9] Under PL 265.03, a person commits Criminal Possession of a Weapon in the Second Degree when "such person possesses any loaded firearm."

[10] Under PL Section 120.11, a person commits Assault on a Police Officer when "with intent to cause serious physical injury to a person whom he know or reasonably should know to be a police officer engaged in the course of performing his official duties, he causes such injury by means of a deadly weapon or dangerous instrument." Under PL Section 110.00, "a person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime."

[11] Under PL Section 120.05(1), a person commits Assault in the Second Degree when "with intent to cause serious physical injury to another person, he causes such injury to such person."