Office of the New York State Attorney General Letitia James

Office of Special Investigation

DATE July 24, 2024

Report on the Investigation into the Death of Kyle Lockett

DEATH OF KYLE LOCKETT, NOVEMBER 3, 2022

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's 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. When OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation into the death of Kyle Lockett, which was caused by members of the New York City Police Department (NYPD) on November 3, 2022.

OVERVIEW

On November 3, 2022, at 11:30 am, Detective John Sullivan, Detective Brian Williamson, and Sergeant James Woods of the NYPD's Queens Warrant Section, Violent Felony Squad, were conducting surveillance in an investigation unrelated to the incident involving Mr. Lockett. The officers were in an unmarked minivan at the corner of East Gun Hill Road and Hull Avenue in the Bronx. Mr. Lockett was inside a convenience store a few yards away, at 330 East Gun Hill Road. A man, AD,[1] holding a knife, entered the store and stabbed Mr. Lockett. AD ran out of the store to his parked car. Mr. Lockett followed AD and fired four shots at him (AD was not seriously injured). The officers got out of the minivan and Detectives Sullivan and Williamson shot Mr. Lockett, striking him four times. Mr. Lockett died of his wounds.

After a full evaluation of the facts and the law, OSI will not seek charges against the discharging officers, and will close the matter with the issuance of this report, having concluded that a prosecutor would not be able to disprove beyond a reasonable doubt that their actions were justified under New York law.

FACTS

Video

The officers directly involved in the shooting in this case were not equipped with body-worn cameras (BWCs).[2]

OSI reviewed video from security cameras from the store at 330 East Gun Hill Road (interior and exterior), from 320 East Gun Hill Road, from 3380 Hull Avenue, and from BWCs of officers who arrived after the shooting. OSI created a compilation video (link).

Videos

[1] OSI does not publish the names of civilians other than the decedent.

[2] At the time of this incident, NYPD did not equip detectives with BWC; after this incident NYPD issued BWCs to warrant squad detectives. However, NYPD still does not require detectives, in general, to use BWCs.

Security videos from the convenience store at 330 East Gun Hill Road shows that at 11:25 am Mr. Lockett entered the store. Mr. Lockett stood near the entrance and walked in and out of the store. At 11:29 am, exterior video shows that AD, driving a white Lexus, parked on Hull Avenue near the corner of East Gun Hill Road, got out of the car, and entered the store.

Interior video shows that at 11:29 am AD punched Mr. Lockett in the face and the two fell to the floor. AD, holding a knife, stabbed Mr. Lockett numerous times. At 11:30 am, AD stood up, ran out, and turned left toward his parked car. Mr. Lockett got up, left the store, and ran after AD.

Still frame from security video at 330 East Gun Hill Road showing AD holding a knife while fighting with Mr. Lockett.

Exterior video shows that AD ran toward his car and got into the driver's seat at 11:30 am. Mr. Lockett ran after AD, holding a gun in his right hand.

Still frame from security video at 330 E Gun Hill Rd (facing west) showing Mr. Lockett leaving the store and holding a gun. AD is at the top of the frame, about to get into his car.

Mr. Lockett fired four shots in AD's direction as he ran across the street toward AD. The police were out of view from the camera, but the camera's audio captured an officer shout, "Police," and then captured the sound of gunfire from the officers. Detectives Williamson and Sullivan came into the camera's view at 11:30:27 am as Mr. Lockett, with the gun in his hand, was by the driver's side of AD's car and AD was in the driver's seat. Mr. Lockett turned from AD's car and, holding the gun, ran to his left along Hull Avenue (southbound), away from the officers, who continued to shoot at Mr. Lockett until he fell to the ground and dropped the gun. As the officers approached Mr. Lockett, video shows a gun next to Mr. Lockett's body. The officers pushed the gun away and handcuffed Mr. Lockett. Emergency Medical Services arrived at 11:32 am.

Still frame from security video at 330 E Gun Hill Rd (facing west) showing Mr. Lockett's first shot, and showing AD getting into his car. The gun is circled.

Still frame from security video at 330 E Gun Hill Rd (facing west) showing Mr. Lockett approaching AD's car with the gun raised, and showing AD getting into the driver's seat and closing the door.

Still frame from security video at 330 E Gun Hill Rd (facing west) showing Mr. Lockett standing next to AD's car with the gun pointed at the driver's side window.

Still frame from security video at 330 E Gun Hill Rd (facing west) showing Detective Sullivan coming into view of the camera with gun raised, while Mr. Lockett turns to run to the left.

Still frame from security video at 330 E Gun Hill Rd (facing south) showing Detectives Sullivan and Williamson approaching Mr. Lockett after fell. Mr. Lockett's gun is visible on the sidewalk.

Officer Interviews

Detective Sullivan

Detective Sullivan said he became a member Queens Warrants Squad in 2016. On November 3, 2022, Detective Sullivan said he and his partner, Detective Williamson, and his supervisor, Sgt. Woods, were looking for the subject of an outstanding warrant, unrelated to Mr. Lockett or AD. Detective Sullivan said they arrived on the corner of East Gun Hill Road and Hull Avenue about one hour before the shooting. The officers sat in an unmarked minivan.

Detective Sullivan was not paying attention to the convenience store at 330 East Gun Hill Road until Detective Williamson said he heard noise in the store. Detective Sullivan saw Mr. Lockett fumble with an object in his hand and then saw that the object was a gun; he saw Mr. Lockett shoot the gun in the direction of the man who was running toward a white car at the corner of East Gun Hill Road and Hull Avenue. Detective Sullivan got out of the minivan and yelled, "Police," but Mr. Lockett did not drop his gun or stop firing. Detective Sullivan fired his gun multiple times at Mr. Lockett, who was shooting into the white car. Detective

Sullivan said he saw that a man was sitting in the car and that Mr. Lockett was shooting right at this man. Detective Sullivan said Detective Williamson also got out of the minivan and fired his gun. Detective Sullivan said he and Detective Williamson stopped firing after Mr. Lockett ran away from the white car along Hull Avenue and dropped his gun near the ice box. Detective Sullivan said he and the other officers approached Mr. Lockett and said Detective Williamson kicked the gun away from Mr. Lockett. Detective Sullivan said he requested an ambulance on his radio when saw that Mr. Lockett was still breathing and that an ambulance arrived very quickly.

Detective Williamson

Detective Williamson said he had been in the NYPD for seventeen years and had joined the Warrants Squad seven years ago. On November 3, 2022, Detective Williamson said he and his partner, Detective Sullivan, and his supervisor, Sgt. Woods, went to the Bronx to look for the subject of an outstanding warrant for a Queens case. Detective Williamson said the officers parked their car at about 11:00 am.

Detective Williamson said he looked toward the convenience store at 330 East Gun Hill Road and noticed that one of the racks inside was pushed over. Detective Williamson said he alerted the other officers that there might be something going on in the store. A couple of seconds later, Detective Williamson saw a man in a blue sweatshirt run out of the store and then saw a man in a gray sweatshirt, whom he later learned to be Mr. Lockett, run out after him, pointing a gun at him. Detective Williamson said he and the other officers in the minivan shouted to each other that they saw a gun. Detectives Sullivan and Williamson got out of the minivan, Detective Sullivan first. Detective Williamson said he saw Mr. Lockett shooting into the front driver side of a white car, where the man in the blue sweatshirt was sitting. He said Detective Sullivan shouted, “Police,” but Mr. Lockett neither looked towards the officers nor stopped shooting into the car. He said he and Detective Sullivan fired their guns at Mr. Lockett. Mr. Lockett ran up the block toward an ice box. Detective Williamson said he and Detective Sullivan stopped shooting after Mr. Lockett dropped his gun and fell to the ground. The officers approached Mr. Lockett and a nearby ambulance responded.

Sergeant Woods

OSI interviewed Sergeant Woods who said he joined NYPD in 2008 and became a sergeant in the Queens Warrants Squad in 2017. On November 3, 2022, Sgt. Woods said he and Detectives Williamson and Sullivan were looking for the subject of an outstanding warrant, unrelated to this incident. Sgt. Woods said they arrived and parked at the corner of East Gun Hill Road and Hull Avenue between 11:00 am and 11:30 am.

One of the detectives said there was something going on in the grocery store; Sgt. Woods could not to see or hear anyone inside but noticed a chip stand knocked over.

Soon after, Sgt. Woods saw AD leave the store, turn toward Hull Avenue, and put something into his pocket. AD ran to a car parked on Hull Avenue. Sgt. Woods heard a gunshot and saw a second person, Mr. Lockett, running and firing the gun toward the car. Sgt. Woods saw Mr. Lockett's arm extended, shooting into the driver's side window.

Sgt. Woods said he then heard a round of shots from Detectives Sullivan and Williamson and got out of the minivan. Sgt. Woods saw AD run away on East Gun Hill Road and turned his attention to Mr. Lockett. He saw Mr. Lockett on the ground and Detective Williamson kick his gun away. Sgt. Woods waved down a nearby ambulance.

Ballistics

Sgt. Oleg Matat of FID found that Detective Sullivan's gun, a semiautomatic, had one live cartridge in the chamber and five live cartridges in the magazine; the gun had a capacity of 16 rounds, indicating (if the magazine had been full and one round had been in the firing chamber, as is common NYPD practice) that 10 rounds were fired. Sgt. Matat found that Detective Williamson's gun, a semiautomatic, had one live cartridge in the firing chamber and thirteen live cartridges in the magazine; the gun had a capacity of 16 rounds, indicating (on the same basis) that two rounds were fired. NYPD's Firearm Analysis Section (FAS) analyzed Detective Sullivan's and Detective Williamson's guns and found them operable.

Detective Jessica Losquadro of the Crime Scene Unit found that Mr. Lockett's gun, a revolver, had one live cartridge and four spent cartridges in the cylinder of the gun, indicating that Mr. Lockett fired up to four shots. FAS analyzed Mr. Lockett's gun and found it to be operable.

NYPD's Crime Scene Unit recovered 4 fired bullets and 11 ejected shell casings, as well as bullet fragments and pieces of lead from the scene. CSU also recovered 2 bullets from the white Lexus, and (from the autopsy) one bullet from the right chest of Mr. Lockett. Detective Haskell of FAS conducted a microscopic comparison of the casings and bullets and identified nine shell casings discharged from Detective Sullivan's gun, two shell casings discharged from Detective Williamson's gun, and four shell casings in the cylinder of the revolver. Detective Haskell identified four bullets from the scene as discharged from Detective Sullivan's gun. He identified the bullet found in the right chest of Mr. Lockett during autopsy as discharged from Detective Sullivan's gun based on their agreement in class characteristics and sufficient agreement in their individual characteristics. Detective Haskell could not identify the bullets found in the white Lexus as discharged from Mr. Lockett's gun but eliminated Detective Sullivan's gun as having discharged them.

Medical Treatment

AD was transported to St. Barnabas Hospital after being arrested by NYPD at 6 West Gun Hill Road. Medical staff treated AD for a gunshot wound to his head by placing a staple in his head. FID Detectives interview Dr. Andrew Jarjour who said that AD had a 1 cm laceration to

his left parietal scalp and a metal object lodged in a subcutaneous space on the left side of his skull; no surgery was done to remove the metal object.

EMS transported Mr. Lockett to Jacobi Medical Center. Medical staff intubated Mr. Lockett and performed a resuscitative left anterolateral thoracotomy and found significant hemorrhage in his left chest, destructive cardiac injury, and injuries to his left upper lung and to the posterior aspect of the ascending aorta and the trachea. Medical staff declared Mr. Lockett dead at 12:03 pm. FID Detectives interviewed Dr. Oark Ahmed who said Mr. Lockett arrived at the hospital in cardiac arrest and despite medical efforts, including blood transfusions, a ventilator, and chest compressions, staff could not save Mr. Lockett's life.

Medical Examiner

Dr. Gina Prochilo of the New York City Office of Chief Medical Examiner performed an autopsy of Mr. Lockett on November 4, 2022. According to the autopsy report, the cause of Mr. Lockett's death was "gunshot wound of left upper extremity/torso with injuries of lungs and major blood vessel." Dr. Prochilo found that Mr. Lockett sustained four gunshot wounds: a perforating wound that entered his left upper extremity/torso and exited through his left arm; a perforating wound that entered Mr. Lockett's infraclavicular right chest and exited through his right axilla; a perforating wound that entered his right posterolateral shoulder and exited through his anterior right shoulder; and a graze wound to his left thumb. Dr. Prochilo also observed two stab wounds to Mr. Lockett's back and blunt trauma of his head, torso, and extremities.

LEGAL ANALYSIS

Article 35 of the New York Penal Law defines the circumstances under which a person is justified in using deadly force against another. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. Unlike an affirmative defense, the people have the burden at trial of disproving a defense beyond a reasonable doubt, PL 25.00(1). In order to obtain a conviction at trial, the People would be required to prove beyond a reasonable doubt that Detectives Sullivan and Williamson were not justified in using deadly physical force against Mr. Lockett. Criminal Jury Instructions 2d, PL 35.15(1). "[W]henever justification is sufficiently interposed … the People must prove its absence to the same degree as any element of the crime charged." *People v. McManus*, 67 NY2d 541, 546-47 (1986).

Article 35 contains a provision defining justification when a police officer uses deadly force while effecting or attempting to effect an arrest for an offense. As detailed below, based on the evidence reviewed in this investigation, OSI would be unable to disprove beyond a reasonable doubt that Detective Sullivan's and Detective Williamson's use of deadly physical force was justified under this provision.

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."

Police officers using deadly physical force pursuant to PL 35.30(1) are under no duty to retreat, PL 35.15(2)(a)(ii).

The Court of Appeals, in *People v. Goetz,* 68 N.Y.2d 96 (1986), said that "reasonable belief" has both subjective and objective components: the subjective component is satisfied if the person using force actually believed, "honestly and in good faith," that deadly force was about to be used against that person or another, and that the use of deadly force was necessary to prevent or stop the danger, whether or not the belief was accurate, 68 N.Y.2d at 114; the objective component is satisfied if a "reasonable person" under the same circumstances could have held the same belief, 68 N.Y.2d at 115. See also *People v. Wesley*, 76 N.Y.2d 555 (1990).

Under PL 35.30, Detectives Sullivan and Williamson could use the physical force they reasonably believed to be necessary to effectuate the arrest of Mr. Lockett and could use deadly force if they reasonably believed it was necessary to defend themselves or another against Mr. Lockett's imminent use of deadly force. After Mr. Lockett shot at AD, the officers had probable cause to arrest him for the crimes of Attempted Murder in the Second Degree, PL 110/125.25(1),[3] and Criminal Possession of a Weapon in the Second Degree, PL 265.03(3).[4]

Based on their interviews with OSI, Detectives Sullivan and Williamson subjectively believed that shooting Mr. Lockett was necessary to stop Mr. Lockett's use of deadly force against AD. The Detectives saw Mr. Lockett chase after AD and shoot at him. They observed Mr. Lockett stand outside of AD's car and shoot through his window, aiming at AD's head at point blank range. Both Detectives believed it was necessary to shoot Mr. Lockett in order to save the life

[3] "A person is guilty of murder in the second degree when with intent to cause the death of another person, he causes the death of such person or of a third person.."

[4] " A person is guilty of criminal possession of a weapon in the second degree when such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business."

of AD who was sitting in his car while Mr. Lockett shot at his head.

Under the circumstances presented above, OSI would be unable to prove that Detectives Sullivan's and Williamson's subjective beliefs were unreasonable. Detective Sullivan's and Detective Williamson's accounts are corroborated by the video described above.

For these reasons, OSI concludes that a prosecutor could not disprove beyond a reasonable doubt that Detective Sullivan's and Detective Williamson's use of deadly force was justified under Article 35 of the Penal Law and will close the matter with the issuance of this report.

Dated: July 24, 2024