Office of the New York State Attorney General Letitia James

Office of Special Investigation

March 21, 2025

Report on the Investigation into the Deaths of Dhal Apet and Lueth Mo

SUMMARY

New York Executive Law 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, as in this case, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the deaths of Dhal Apet and Lueth Mo.

On September 6, 2023, Onondaga County Sheriff's Office (OCSO) Deputy John Rosello shot 17-year-old Dhal Apet and 15-year-old Lueth Mo, causing their deaths. After a full evaluation of the facts and the law, OSI will not seek charges against Dep. Rosello because we conclude that a prosecutor could not disprove beyond a reasonable doubt that his actions were justified under Article 35 of the New York Penal Law.

On the morning of September 6, 2023, Dep. Rosello responded to a parking lot in the Town of Dewitt after a 911 caller reported seeing people suspiciously moving items back and forth between two cars. Dep. Rosello had been investigating the burglary of an unoccupied smoke shop that had occurred earlier that morning; the dispatch following the 911 call described cars and people that were consistent with information about the burglary. When Dep. Rosello pulled into the parking lot, one of the two cars fled, and Dep. Rosello drove his police car nose to nose into the remaining car, a Hyundai Elantra, in an apparent attempt to block it from leaving the lot. Mr. Apet and Mr. Mo were in the Hyundai as passengers. Dep. Rosello got out of his car, and the driver of the Hyundai backed up and then drove forward, toward Dep. Rosello. As the Hyundai advanced, Dep. Rosello fired his OCSO-issued gun into the car three times, twice through the windshield and once through the front passenger side window. One bullet struck Mr. Apet and one bullet struck Mr. Mo and both young men died of their wounds.

OSI had the bullets recovered from the shooting analyzed by the Federal Bureau of Investigation (FBI) Laboratory, and retained the services of a shooting reconstruction expert and a police use of force expert. Based on the investigation and the work of the experts, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that Dep. Rosello reasonably believed the Hyundai might strike him, and that he reasonably believed that he could prevent the car from striking him by shooting into it. Therefore OSI will not seek charges, and closes the matter with this report.

FACTS

Pre-Shooting Burglary Incident

Based on Onondaga County 911 Center audio recordings, on September 6, 2023, at 5:36 a.m., Witness One (W1; OSI does not publish the names of civilian witnesses) called 911 and reported that a white car and black SUV were parked in front of Prince's Smoke Shop in the

Town of Mattydale, and that she saw three people get out of the white car, kick in the door of the smoke shop, and go inside. W1 said the people were wearing black pants and black hoodies, and, when asked by the dispatcher, said she did not see any weapons.

Security video from Prince's Smoke Shop, which OSI has reviewed, showed that a white car and a black minivan pulled into the parking lot at 5:32 a.m. One person got out of the black van and kicked in the door to the smoke shop, and he and two people from the white car went inside, took the cash register and other items from the shelves, and ran out. The two cars drove out of the parking lot at 5:34 a.m. Based on their clothing, it appeared that decedents Lueth Mo and Dhal Apet were among the people who went into the smoke shop.

Based on the 911 Center's recorded radio transmissions and logs, at 5:38 a.m. an Onondaga County dispatcher requested a police response at Prince's Smoke Shop for a "possible burglary in progress," adding that there was "…a white car and a black SUV with three people kicking in the door," and that the "caller saw them enter the building." Based on OCSO Dep. Charles Bouck's OCSO Incident Report, the 911 Center's recorded radio transmissions, and dashboard camera video from Dep. Rosello's police car, Deps. Bouck and Rosello responded to the smoke shop, and, at 5:42 a.m., Dep. Rosello radioed that the building was clear.

Shooting Incident

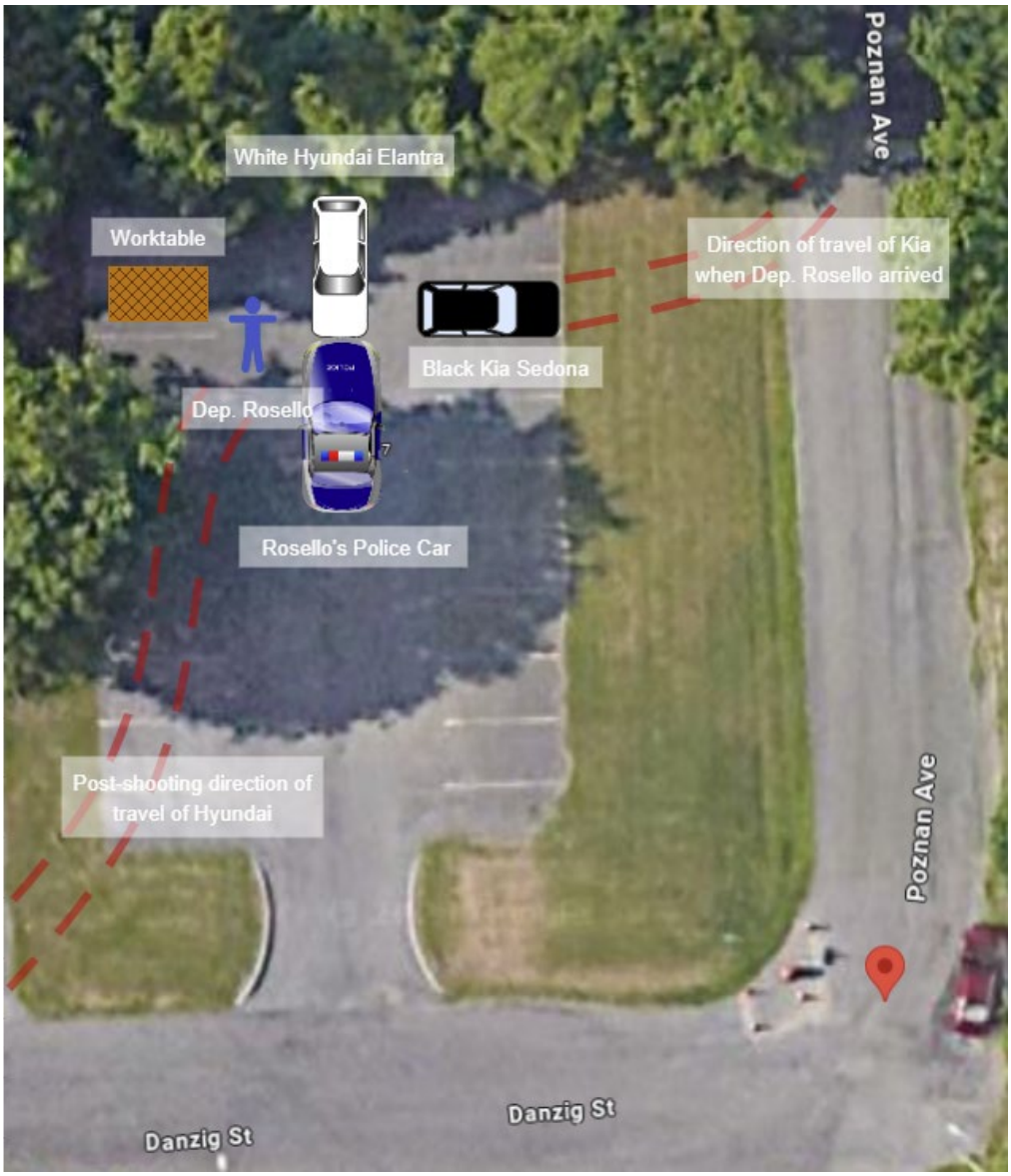
Based on the 911 Center's audio recordings, shortly after, at 6:15 a.m. Witness Two (W2) called 911 and said he saw a white car and a dark-colored minivan in a parking lot at the intersection of Danzig Street and Poznan Avenue in the Town of Dewitt, and that three or four "guys," dressed mostly in dark clothing, were moving items from one car to the other and congregating at the back of the minivan. W2 said the activity seemed suspicious to him based on recent car and mail thefts in the area.

At 6:17 a.m. a dispatcher radioed law enforcement, including OCSO and the Dewitt Police Department (DPD), saying in part: "… suspicious person in progress…caller is reporting a four door sedan and a dark colored minivan with three or four males moving items from one vehicle to the other, all males are wearing dark clothing…unknown on weapons, unknown intoxication, caller also mentioned seeing suspects using a white bag to transfer items…" Following the dispatch, Dep. Rosello radioed what sounded like, "Send me there." Shortly after, an unrelated disturbance in the Town of Dewitt was reported to 911, and DPD Sergeant James Dean radioed that if Dep. Rosello was going to the suspicious person, DPD Officers Jade Shimer and Enes Hujdur should go to the disturbance, and DPD Officer Susan Thompson should go with Dep. Rosello. During interviews with OSI, DPD Sgt. Dean and Officers Thompson, Shimer, and Hujdur each said it was not unusual that Dep. Rosello responded to the call, despite the site being in the Town of Dewitt, as OCSO covers that area and Dep. Rosello had responded to the earlier, seemingly related, burglary incident.

A home security camera showed the parking lot described in the 911 call and captured the shooting incident (called in this report the Video). The Video is the only video OSI found that captured the incident. OSI obtained and reviewed all videos collected by OCSO, and independently canvassed the area for video, but found no others that captured the shooting. Dep. Rosello did not activate his body worn camera. Based on review of Dep. Rosello's dashboard camera footage, review of the camera's audit log, and interviews with representatives of the camera's supplier, Axon, Dep. Rosello turned his dashboard camera off at 6:21 a.m. en route to the parking lot where the shooting occurred.

According to the Automatic Vehicle Location (AVL) data from his police car, Dep. Rosello arrived at the parking lot at 6:24 a.m. (OSI assumes the time from the AVL to be accurate and the timestamp in the Video, which differs by a few minutes, to be inaccurate.) The Video shows that before Dep. Rosello pulled into the parking lot, people appeared to be moving items between two cars, a white 2018 Hyundai Elantra sedan and a black 2017 Kia Sedona minivan. (Both cars were later reported stolen by their owners.) As Dep. Rosello pulled into the parking lot the people dispersed, and three of them ran into the white Hyundai Elantra, which was backed in against the foliage line at the rear of the parking lot. Based on the Video and OSI's investigation, Lueth Mo got into the front passenger seat, Dhal Apet got into the back seat through the rear driver's side door, and 16-year-old Witness Three (W3) got into the driver's seat. The other people ran into the black Kia Sedona minivan, which immediately drove out of the parking lot and away from the scene, traveling northbound on Poznan Ave. Based on the Video and the investigation, the people in the Kia were too far from the scene when the shooting occurred to have seen what happened.

The below diagram, created by OSI, shows the parking lot, the relative positions of Dep. Rosello, his police car, and the Hyundai when Dep. Rosello first got out of his car, and the general directions of travel of the Kia when Dep. Rosello arrived and the Hyundai after the shooting. The diagram is not to scale. The position of the home security camera that captured the Video would be off the diagram, to the lower right.



As shown in the Video, Dep. Rosello pulled into the parking lot and bumped the front of his police car into the front of the Hyundai Elantra, pushing the Hyundai back into the foliage. Dep. Rosello immediately got of his car and walked toward the front of the Hyundai. Dep. Rosello was to the left (driver's side) of the police car and, as the cars were nose to nose, to the right (passenger side) of the Hyundai. As Dep. Rosello was getting out, the driver of the Hyundai briefly turned the car left (toward the passenger side of the police car, opposite Dep. Rosello's position) and then backed up and drove forward and to the right, toward Dep. Rosello, apparently to get around the police car. As the Hyundai drove toward him, the police car momentarily blocked the view of Dep. Rosello on the Video, but once he came back into view, the Video showed him in an apparent shooting stance, to the left of his police car, with a table a few feet behind him, and the Hyundai beginning to drive toward him.

The Video showed that as the Hyundai drove forward, Dep. Rosello remained in the shooting stance with his arms extended and pointed at the Hyundai, stepping backward as the car neared him. Dep. Rosello released his left arm from the shooting stance when the car had almost fully passed him.

The Hyundai left the parking lot, driving over the lawn and driveway of a nearby house, and went westbound on Danzig St. Based on the Video and the 911 Center's recorded radio transmissions and logs, at 6:25 a.m. Dep. Rosello radioed, "White car, tried to run me over, shots fired," followed by, "Hold the air for now, I'm all set. Last direction of travel was westbound on Poznan…white Hyundai sedan." Based on police reports and other video, after the Hyundai drove away, Dep. Rosello got into his police car and began driving in the same direction, but returned to the parking lot within minutes. Following Dep. Rosello's dispatch, several officers responded to the scene.

Given the distance and angle of the camera that captured the Video, the lack of audio, and the visual blocking by Dep. Rosello's police car as the Hyundai began to drive forward, the Video does not clearly show the precise moments or angles of Dep. Rosello's shooting. Thus, OSI enlisted the assistance of the New York State Police Forensic Video/Multimedia Services Unit (NYSP VMSU) to enhance the Video; NYSP VMSU members were able to clarify the Video, slowing it down, zooming in, and enhancing brightness and contrast. The Enhanced Video is here. The times in the title cards of the Enhanced Video, which explain the nature of each enhancement, are based on the time stamps in the Video, which are a few minutes ahead of the AVL and other police devices. The Enhanced Video more clearly shows the incident, including what appears to be possible smoke from a gunshot as the Hyundai drove forward, as shown below in a still image from the Enhanced Video.

Based on their body worn camera (BWC) videos and interviews with OSI, DPD Sgt. Dean and Officers Shimer and Hujdur were the first officers to arrive at the parking lot after the shooting, followed shortly by Officer Thompson and OCSO members. Based on Officer Hujdur's BWC video, at 6:29 a.m. Dep. Rosello was sitting in his police car with the driver's side door open. As officers approached, Dep. Rosello got out and, when asked what had happened, said, "They were fucking dicking around, I pulled up, blocked the white car in, and he fucking pushed my car and fucking almost ran me the fuck over." Sgt. Dean asked, "Did you shoot, or they shoot?" and Dep. Rosello said, "I shot." Officer Hujdur asked if only the Hyundai was involved, and Dep. Rosello pointed to where the Hyundai went and where the black minivan went. Sgt. Dean asked where Dep. Rosello was when he fired, and Dep. Rosello pointed to the left of his police car and said what sounded like, "Right there, casings are right there."

Based on the 911 Center's audio recordings and OSI's witness interviews, residents of Mooney Avenue in the City of Syracuse began calling 911 at 6:45 a.m. to report a white car in the street with two boys inside who needed help. Callers said the car rolled backward and crashed into a parked van; based on OSI's interviews, one witness saw a person get out of the front passenger seat of the car and stumble around while calling out W3's first name shortly before the car crashed. Based on their BWC videos, members of OCSO, including Sgt. Mark Grady, and members of the Syracuse Police Department, arrived at Mooney Ave within minutes. Sgt. Grady's BWC showed that upon his arrival Mr. Mo was in the driver's seat of the car, slumped back, and Mr. Apet was lying slumped over in the back of the car with his upper body on the passenger's side seat. Responding officers rendered aid until emergency personnel arrived and took over care; paramedics pronounced Mr. Apet dead on scene, and Mr. Mo was transported to Upstate University Hospital, where he was pronounced dead later that morning.

Based on OSI's interview with W3, detailed below, and consistent with surveillance videos from houses on Mooney Avenue, following the shooting W3 drove to Mooney Avenue, got out of the car, and went to his grandmother's house where he told his brother, W4, to get help because Mr. Mo appeared to still be alive. W4 then went to Mooney Avenue and alerted residents that the people in the car needed help. Based on OSI's witness interviews, review of home security videos, and review of DNA results, detailed below, after W3 left the car, Mr. Mo, who was initially in the front passenger seat, got out of the car and into the driver's seat; Mr. Mo drove the car forward into a wooded dead-end area at the end of the street and then backward until it hit a parked van and came to rest.

Evidence Collection

Based on the OCSO Incident Reports and crime-scene photographs, on September 6, 2023, OCSO evidence technicians (ETs) processed the parking lot where the shooting took place and the scene at Mooney Avenue. They collected three spent shell casings from the parking lot, among other items. The below OCSO photograph shows where the three casings were recovered, circled in red.

Based on her OCSO Incident Report, at around 8:38 a.m. on September 6, 2023, OCSO ET Stephanie Pileski photographed Dep. Rosello at the OCSO and collected his OCSO-issued firearm, a Glock 21 .45 Auto semiautomatic pistol with an attached flashlight, and its accompanying magazine, which contained 11 live rounds (the fully loaded capacity of the gun was 14, consisting of 13 rounds in the magazine and one round in the firing chamber).

On September 7, 2023, OCSO ETs processed the 2018 Hyundai Elantra pursuant to a search warrant, with an OSI detective present; among other items, OCSO members recovered a fired

bullet from the driver's side seatbelt pillar. As detailed more fully below, there were two bullet holes in the front windshield; the front passenger's side window was shattered. OCSO members also collected fabric from the seats containing apparent blood.

OCSO members recovered items from the Hyundai and the parking lot that appeared consistent with merchandise from smoke shops.

As detailed more fully below, Onondaga County Chief Medical Examiner Carolyn Revercomb recovered one fired bullet from Mr. Apet's body, and one fired bullet from Mr. Mo's body.

OCSO members, in coordination with OSI, submitted evidence to the Onondaga County Center for Forensic Sciences (OCCFS) for analysis; OSI requested that OCCFS conduct specific testing, the results of which are summarized below.

OCCFS Ballistics Analysis

The OCCFS Firearms Section issued a report saying that, following analysis, the three spent casings collected from the parking lot were fired from Dep. Rosello's gun. The Firearms Section analyzed the three fired bullets and found "agreement of class characteristics" among them, but found "insufficient agreement or disagreement of individual characteristics to either identify or eliminate [the three bullets] as having been fired from the same firearm, or from [Dep. Rosello's gun]." The Firearms Section did find that the bullets recovered from Mr. Apet and Mr. Mo had "characteristics consistent with being 45 caliber."

The OCCFS Firearms Section also noted the presence of "trace evidence" with the bullet that was recovered from the driver's side seatbelt pillar. As detailed below, OSI enlisted the FBI Laboratory to determine whether the trace evidence was glass, and if so, which window of the Hyundai was its source.

OCCFS DNA Analysis

The OCCFS Forensic Biology/DNA Section issued a report of its analysis of the fabric containing possible blood stains from the Hyundai's seats, which said the Section found that the DNA profile obtained from the blood on the seatback of the front passenger's seat matched the DNA profile obtained from Mr. Mo, and that the DNA profiles obtained from the blood on the seatback of the rear driver's side seat, the rear passenger's side seat, and the seatback of the rear passenger's side seat matched the DNA profile obtained from Mr. Apet. The Section said its analysis "provides support that [Mr. Mo]…is a contributor to the DNA profile obtained from the…steering wheel," and that "[Mr. Mo] is a contributor to the DNA profile obtained from the…front driver's seat back."

FBI Trace-Mineralogy Evidence Analysis

OSI submitted the three fired bullets, along with glass samples from the Hyundai's windshield and front passenger's side window, to the FBI Laboratory's Trace Evidence Unit. (As discussed below, OSI retained a shooting reconstruction expert; he collected the glass samples submitted to the FBI.) The Trace Evidence Unit recovered glass particles from each fired bullet, compared the glass particles to the samples from the Hyundai's windows, and concluded that the "glass particles recovered from the bullet from the Apet autopsy…and the bullet from the [seatbelt pillar]…are indistinguishable from the glass recovered from the outside pane of the front windshield of the Hyundai Elantra," and that the "glass particles recovered from the bullet from the Mo autopsy…are indistinguishable from the glass recovered from the front passenger side window of the Hyundai Elantra."

Data from the Hyundai

At OSI's request, NYSP members downloaded the Event Data Recorder (EDR) data and attempted to download the Infotainment data from the Hyundai to determine whether the Hyundai's speed or any other relevant information during the incident was recorded. The EDR results did not reveal any relevant information; EDRs generally do not preserve data unless triggered by an event, such as a collision. NYSP members were unable to obtain data from the Infotainment system.

Medical Examiner

Onondaga County Chief Medical Examiner Carolyn Revercomb, M.D., conducted the autopsies of Mr. Apet and Mr. Mo on September 7, 2023, at the Onondaga County Medical Examiner's Office, and OSI received and reviewed Dr. Revercomb's Final Autopsy Reports.

Concerning the autopsy of Mr. Apet, Dr. Revercomb said the cause of his death was a penetrating gunshot wound of the head. In her report, Dr. Revercomb said the wound's entrance was in Mr. Apet's "right upper head," and that the direction of the wound track was "from right to left, downward, and very slightly backward." Dr. Revercomb recovered a deformed projectile from Mr. Apet's scalp.

Concerning the autopsy of Mr. Mo, Dr. Revercomb said the cause of his death was a penetrating gunshot wound of the back. In her report, Dr. Revercomb said the wound's entrance was in Mr. Mo's "left back," "centered 14-1/2 inches below the top of the head and 7/8 inch[es] left of midline," and that the direction of the wound track was "from back to front, upward, and leftward." Dr. Revercomb recovered a deformed projectile from the "muscle and soft tissue of the anterior [of Mr. Mo's] left shoulder."

OSI met with Dr. Revercomb to discuss her findings. When asked, Dr. Revercomb said that the location and path of Mr. Mo's gunshot wound was consistent with his having been in a turned, ducking position with his back toward the front passenger's side window when he was struck, and that the location and path of Mr. Apet's gunshot wound was consistent with his ducking down with his head forward and slightly turned, but Dr. Revercomb said she could not say this with certainty. Dr. Revercomb also said Mr. Apet's gunshot wound would have caused his death quickly, at most within minutes, but that had Mr. Mo got to a hospital sooner, his chances of survival likely would have increased, though she could not say with certainty he would have survived.

Shooting Reconstruction Expert

OSI retained shooting reconstruction expert John Paolucci of C.S.I. Experts, Inc., to determine, to the extent possible, the sequence and trajectory of the three gunshots and the position of Dep. Rosello in relation to the Hyundai at the moment of each shot.

Mr. Paolucci conducted an in-person forensic analysis of the Hyundai, which entailed analyzing the ballistic damage caused by each gunshot and conducting trajectory analysis to determine the flight paths of the bullets and the approximate spatial relationship between Dep. Rosello and the Hyundai during the shooting. Mr. Paolucci also reviewed the Video, the Enhanced Video, crime-scene photographs, BWC videos of responding DPD members, the Final Autopsy Reports of Mr. Apet and Mr. Mo, the OCCFS Firearms and DNA Reports, the FBI Trace-Mineralogy Report, and OCSO Incident Reports regarding evidence collection and scene measurements. Following his analysis and evaluation of the evidence, Mr. Paolucci issued a Shooting Incident Analysis Expert Report detailing his findings and conclusions, which are summarized below.

The below photograph of the Hyundai, taken by Mr. Paolucci during his analysis of the car, shows the two bullet holes in the windshield, marked BH1 and BH2; as noted above, the front passenger's side window shattered during the incident and left no bullet hole to analyze.

Following his analysis, Mr. Paolucci concluded that "the bullet that created BH1 struck the windshield at an…angle that was measured at approximately 45 degrees…" [and] continued to move through the interior of the Hyundai and struck the [seatbelt] pillar…," and that "the bullet that created BH2 struck the windshield at an…angle of approximately 35 degrees…[and] continued to move through the vehicle and struck Dhal Apet." In his Report, Mr. Paolucci stated that "the most likely sequence of the shots through the windshield [were] BH1 being the first shot fired, followed closely by BH2," and that both bullets "came very close to the driver's seat, with the BH1 bullet traversing the space occupied by the driver."

Mr. Paolucci also indicated that neither shot was fired "from directly in front of the [Hyundai]," and that Dep. Rosello was "slightly to the right of the vehicle, aligned with an axis from the bullet hole at BH1 to the passenger side headlight assembly when the first shot was fired, and aligned with an axis from BH2 to the rear edge of the front quarter panel when the second shot was fired." Based on his analysis, Mr. Paolucci opined that the "path of the [Hyundai came] very close to an approximate location where [Dep. Rosello] was standing" when the first two shots were fired.

According to Mr. Paolucci, the third and final shot perforated the front passenger side window, and Dep. Rosello was "in a position where the fired bullet struck the glass at an orientation that was perpendicular or nearly perpendicular to the front passenger window." In his report, Mr. Paolucci noted that the Hyundai was "no longer in a position to strike the deputy" when this shot was fired.

Mr. Paolucci also made the following determinations based on his review and analysis of the video footage and aforementioned materials:

- "The first shot was not fired until the Hyundai had started accelerating towards the location of [Dep. Rosello]," and the time that elapsed during the three shots was "less than 2.5 seconds."
- Dep. Rosello appears to have "ceased firing his weapon before the Hyundai [had] fully passed him."
- The "close proximity" between the two spent shell casings that correspond with the front windshield gunshots "suggests a succession of shots with minimal movement of the firing position." The distance between the two casings and other items at the scene indicates that "the Hyundai passed close to [Dep. Rosello] at the time those shots were fired." Specifically, the distance between "the right corner of the Hyundai's front bumper and [Dep. Rosello]" during the first two shots would have been "considerably less" than "13.78 [feet] and 18.16 [feet]," respectively.

OCSO Policies and Procedures

OSI obtained and reviewed OCSO's "Subject Management" Written Directive, which governs uses of force. As a general matter, OCSO's policy instructs its members to use "only force that is objectively reasonable…to effectively bring an incident under control, while protecting the lives of the member and others." Under "Section V. A. 1.," members are authorized "to use deadly physical force only to protect the member or others from what is reasonably believed to be a threat of imminent danger of death or serious physical injury," and to use "deadly physical force in accordance with Article 35 of the [New York State] Penal Law, *Tennessee v. Garner* and Sheriff's Office rules, regulations, policies and procedures as they pertain to the use of force." The policy also says: "The decision to discharge a firearm at or from a moving vehicle shall be governed by V. A. 1. of this written directive and is prohibited if the discharge of the firearm presents an unreasonable risk to the member, other members of service or the public."

OSI Interviews

Dep. Rosello

Through his attorney, Dep. Rosello refused OSI's interview request.

W2 (Nearby Resident)

W2 told OSI he was standing outside on his front porch when Dep. Rosello pulled in and the incident unfolded. He said when the deputy pulled in the black minivan fled and the deputy hit the white car with the front of his police car "to stop them from going." W2 said the deputy got out and was standing next to his driver's side door when the white car started "going forward at him." The deputy appeared to "jump out of the way" and fired his gun. W2 heard three shots in quick succession. W2 said there wasn't much room between the table in the

parking lot and the police car and, from his angle, it appeared that the deputy would have been hit had he not moved. When asked, W2 said he did not hear the deputy yelling or giving any commands, but said he wasn't paying attention to that because the incident happened so fast. W2 said after the white car fled the area he went to the parking lot to check on the deputy, and the deputy appeared to be "walking okay." W2 told OSI he had watched the video several times.

OSI also obtained and reviewed a written affidavit W2 provided to OCSO, in which he said he saw the white car swerve at the deputy, and then heard two gunshots.

W3 (Driver of White Hyundai)

For background, W3 faces potential criminal liability for alleged crimes in Onondaga County involving the stolen Hyundai and the Prince's Smoke Shop burglary. Separately, W3 has been arrested for alleged thefts in Madison County, which occurred earlier in the morning of September 6, 2023, shortly before the Prince's Smoke Shop incident. W3 has also been arrested for alleged thefts which occurred in January of 2024 in Monroe County. OSI has no prosecutorial authority concerning any of these alleged crimes.

OSI interviewed W3 in the presence of his attorneys, without any promise or agreement having been made. W3 said that he and five of his friends were in the parking lot moving "stuff" between cars on the morning of September 6, 2023. W3 said he first noticed the police car pulling in after seeing one of his friends start to run to the black minivan and he did not see any emergency lights or hear any sirens. W3 said once he saw the police car he got into the driver's seat of the white Hyundai, and Mr. Mo got into the front passenger's seat; W3 said he did not initially realize that anyone else got into the car with them. W3 said when the police car pulled in, it bumped into his car, pushing it back. W3 told OSI that, following a verbal exchange with Mr. Mo, he decided to drive out of the parking lot to "get away." According to W3, he looked out of the driver's side window and either attempted to or thought about driving around the passenger's side of the police car, in the same direction as the Kia minivan, but realized he did not have room, so he started to drive the other way.

W3 said he saw the deputy get out of his patrol car and next saw him in front of the Hyundai, but to the side, toward the passenger side bumper. W3 saw the deputy's arm extended and a black object in his hands, but initially thought it was a Taser because he saw something yellow on it. W3 said he did not know when the deputy first drew what he now knows was his gun. W3 said as he drove forward to get out of the parking lot he did not intend to hit the deputy and did not feel the deputy was in danger of being hit because there was plenty of space in the parking lot. W3 said he did not "floor" the gas pedal, but instead drove away in a "normal" manner. W3 said he felt that the deputy must have started shooting as soon as W3 began to drive, but said he did not remember hearing any gunshots, and did not realize they were being

shot at in the moment. W3 also said he at no time saw the deputy directly in front of the driver's side of the Hyundai.

W3 said that as he pulled out of the parking lot Mr. Mo said he had been shot, which is when W3 first realized the deputy had fired his gun at them. W3 continued driving away and, soon after, glass from the passenger-side window fell, and he noticed two bullet holes in the windshield. W3 said he looked in the back seat and realized Mr. Apet was there, but he appeared already dead. W3 said he drove to Mooney Avenue, parked the car in the street, and went to his grandmother's house on foot. W3 said before he left he held Mr. Mo in his arms and tried to get him out of the car but was unable to. W3 said he could tell Mr. Mo was still alive at that time, as he was asking W3 to help him. W3 said when he got to his grandmother's house he told his brother, W4, to call 911 and to make sure Mr. Mo was okay. W3 expressed remorse and regret over not driving his friends to the hospital.

OCSO Lieutenant Crayg Dykes (Training)

OSI interviewed Lt. Dykes, who oversees OCSO's policies and training and is the Director of OCSO's academy. Lt. Dykes was not the Director when Dep. Rosello went through the academy, but he said the "Subject Management" training was not materially different at that time. Lt. Dykes provided OSI with the training materials and lesson plans for the year Dep. Rosello was in the academy.

During the interview, Lt. Dykes said that the section of the "Subject Management" policy involving shooting at moving vehicles is listed under "restrictions" due to the associated risks. Lt. Dykes explained that the risks include the difficulty of being accurate and the possibility of a motor vehicle crash occurring and uninvolved persons being injured if the driver of the car is struck and disabled. Lt. Dykes said that, during the academy, members are advised of these risks regarding shooting at moving vehicles. OSI asked Lt. Dykes what would be considered an "unreasonable risk to … the public" as stated in their policy, and he gave a possible example of firing at someone in a crowded mall. OSI then asked whether passengers in a car would be considered "the public," and he acknowledged there were parallels between that and the mall example, but cautioned that every situation is fluid and different, and that members are not expected to die in order to follow the policy stringently, so long as their actions fall within the parameters of Article 35 and *Tennessee v. Garner* (a United States Supreme Court case from 1985 holding that under the Fourth Amendment of the U.S. Constitution, a police officer may use deadly force to prevent the escape of a fleeing suspect only if the officer has a good-faith belief that the suspect poses a significant threat of death or serious physical injury to the officer or others).

Lt. Dykes said that Dep. Rosello's actions in pulling into the parking lot constituted a "felony stop," and that, tactically, OCSO members are not taught to approach or stop a vehicle nose-to-nose, but rather to approach from behind. However, Lt. Dykes said members are not taught

that they *can't* approach a vehicle from the front, and said that the usual tactical training concerning felony stops did not really apply to the situation Dep. Rosello was in, as the car in question was backed in against trees. Lt. Dykes agreed that, when possible, it would be ideal to wait for backup, and said that many times officers will issue commands over the police car's loudspeaker during felony stops, but said again that every situation is different, that officers are not instructed on every conceivable situation, and that the situation Dep. Rosello was in did not lend itself to the typical felony stop training. Lt. Dykes also said there are no restrictions on when a member can *draw* his or her weapon as a compliance tactic or to gain or maintain control over a situation.

When asked, Lt. Dykes said he could not point to a direct policy that Dep. Rosello violated from what he knew about the incident, which included watching the video footage that was publicly released by the Attorney General's Office. Lt. Dykes said there are risks associated with second-guessing or waiting to make life or death decisions in fast-paced situations.

Lt. Dykes said OCSO members are required to attend annual refresher courses concerning Use of Force, which focus generally on Article 35 rather than specifics such as shooting at moving vehicles. Lt. Dykes said OCSO members are provided with OCSO's written policies and directives, and provided us with Dep. Rosello's electronic confirmation of receipt of the "Subject Management" policy.

Use of Force Expert

OSI retained Ashley Heiberger to analyze the case and opine on whether Dep. Rosello's actions were consistent with generally accepted police practices and principles. Mr. Heiberger was an officer with the Hazleton, Pennsylvania Police Department in 1995 and 1996, and, from 1996 to 2017, was a member of the Bethlehem, Pennsylvania Police Department, including as a Patrol Officer, Sergeant, Accreditation Coordinator, Lieutenant, and Captain; when he was a Captain Mr. Heiberger was the Professional Standards Division Commander, Records Bureau Supervisor, and Accreditation Manager. After his police career, Mr. Heiberger was a Senior Policy Advisor with Rosenbaum and Associates, where he reviewed, analyzed, and issued expert opinions regarding Portland Police Bureau's written directives, training materials, and certain use of force incidents. Mr. Heiberger has experience as a police trainer and as an adjunct professor in policing related subjects, and holds a Juris Doctor. Mr. Heiberger is now a Fellow in the Excellence in Policing and Public Safety program at the John F. Rice School of Law at the University of South Carolina, and in the Future Policing Institute. Mr. Heiberger has testified as an expert in police practices in depositions in civil actions and in an inquest.

After he was retained by OSI, Mr. Heiberger reviewed the Video, the Enhanced Video, Mr. Paolucci's Shooting Incident Analysis Expert Report, BWC videos of responding DPD members, OCSO's Subject Management Policy, OCSO's training materials, audio recordings and radio

transmissions from the 911 Center, witness interviews, and forensic and laboratory reports. After analyzing the materials, Mr. Heiberger issued an Expert Report, concluding that "a reasonable officer could have used deadly force in the same manner as the deputy under the totality of the circumstances then existing, and such use of deadly force would have been in accordance with generally accepted law enforcement practices."

Mr. Heiberger said these factors were "central" to his analysis: "…that [Dep. Rosello] did not fire until the car started accelerating toward him, that he stepped back while firing as both he and the [Hyundai] were moving, and that the car passed very close to him." Mr. Heiberger also noted the short amount of time, less than 2.5 seconds, within which the shooting unfolded.

Mr. Heiberger noted that, based on generally accepted police practices and principles, "officers are not required to delay responding once they reasonably perceive a threat," and opined that Dep. Rosello "did not engage in a 'preemptive strike,'" but rather, "held his fire until the potential threat, the car, became an imminent threat by moving toward him," which Mr. Heiberger concluded was reasonable. Mr. Heiberger also stated that Dep. Rosello reasonably "attempted to create distance by stepping backward and away from the vehicle's path (which could not be safely predicted)."

When assessing the third shot fired by Dep. Rosello, after the front of the Hyundai had passed him and no longer presented a threat of deadly force, Mr. Heiberger said that "Perception-Response Time," which is "the time it takes a human to perceive and respond to a change in their environment," was a factor in his analysis. Mr. Heiberger said "…it took [Dep. Rosello] some amount of time to perceive [that] the threat had ended and respond by ceasing fire." He said that when comparing Perception-Response Time with the amount of time within which the shooting occurred, "it cannot be said that [Dep. Rosello's] performance in that regard was outside acceptable parameters." When discussing his opinions with OSI, Mr. Heiberger said that Dep. Rosello's actions immediately following the third shot, including removing himself from his shooting stance even before the car had fully passed him and transmitting information over his radio, indicated that Dep. Rosello perceived a change in threat level, which in turn indicated that he perceived a threat when he fired, and had not yet perceived the change in threat when he fired the third shot.

LEGAL ANALYSIS

Article 35 of the New York Penal Law governs the circumstances under which a person may be justified in using deadly force against another. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). In this case the People would be required to prove beyond a reasonable doubt that Dep. Rosello was not justified in his use of deadly physical force. The defense of justification is available to a defendant whether his

or her conduct is alleged to be intentional, reckless, or criminally negligent. *See People v McManus*, 67 NY2d 541 (1986); *People v Hoy*, 504 NYS2d 939 (4th Dept 1986).

As the Court of Appeals recently stated in *People v Castillo*, NY Slip Op 05817 (2024):

> "The defense of justification provides that a person may use physical force to defend himself against an assailant's 'imminent use of unlawful physical force,' but does not authorize the use of 'deadly physical force . . . unless . . . [the person] reasonably believes that [the assailant] . . . is using or about to use deadly physical force' (Penal Law § 35.15). When considering a request for a justification charge, courts examine the evidence in the light most favorable to the defendant, and must provide the instruction if there is any reasonable view of the evidence that defendant was justified in his actions (see *People v Heiserman*, 39 NY3d 988, 990 [2022]). Justification has both a subjective requirement, that 'defendant . . . actually believed . . . he [was] . . . threatened with the imminent use of deadly physical force,' and an objective requirement, that defendant's 'reactions were . . . those of a reasonable man acting in self-defense' (*People v Collice*, 41 NY2d 906, 907 [1977])."

Castillo, Slip Opinion at 3 (square brackets and ellipses in the original).

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, PL 35.30. Based on the circumstances, Dep. Rosello could have reasonably believed that the individuals in the parking lot were the same individuals who had broken into Prince's Smoke Shop and stole merchandise earlier that morning, and that they therefore could have committed offenses including Burglary in the Third Degree (under PL 140.20, a person is guilty of Burglary in the Third Degree when that person knowingly enters unlawfully in a building with the intent to commit a crime therein). If acting pursuant to PL 35.30, a police officer need not retreat when faced with the imminent use of deadly physical force, PL 35.15(2)(a)(ii).

PL 35.30(1) provides, in pertinent part:

> "A police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, 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 to prevent the escape from custody, 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 another person from what the officer reasonably believes to be the use or imminent use of deadly physical force."

Deadly physical force is defined as "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." PL 10.00(11). Serious physical injury means "impairment of a person's physical condition 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 10.00(10). The Penal Law specifically designates a "vehicle" as a "dangerous instrument," meaning that it, depending on the circumstances in which it is used, is "readily capable of causing death or other serious physical injury." PL 10.00(13).

Based on the investigation, a prosecutor would not be able to disprove that Dep. Rosello subjectively believed that shooting the driver of the Hyundai was necessary to stop his imminent use of deadly force. Immediately after the shooting, Dep. Rosello radioed, "White car, tried to run me over, shots fired," giving rise to the inference that Dep. Rosello fired his gun in response to his perception that the driver of the Hyundai was trying to hit him with the car. When DPD members responded to the parking lot shortly after the shooting and asked Dep. Rosello what happened, he replied, in part, "…and [he] fucking almost ran me the fuck over." Additionally, based on Mr. Heiberger's analysis, once Dep. Rosello fired the final shot into the car, his subsequent actions were consistent with his perception of a diminished threat level, implying that he in fact perceived a threat to begin with.

In addition, based on the investigation, a prosecutor would not be able to disprove that Dep. Rosello's subjective belief that deadly physical force was necessary to stop the driver from using deadly force was reasonable. Based on Mr. Paolucci's analysis and report, Dep. Rosello was close to the Hyundai as it advanced toward him. Based on the Enhanced Video and Mr. Paolucci's report, Dep. Rosello did not begin firing until the Hyundai started driving toward him, which is consistent with his on-scene statements that he fired because he believed the car was trying to run him over. Although the front of the Hyundai had clearly already passed Dep. Rosello when he fired the third shot through the side window, because of how quickly the incident unfolded, the continuing movement of the car, Dep. Rosello's movement in response to the car's movement, and the lag time between perception and reaction, OSI concludes a prosecutor would be unable to disprove beyond a reasonable doubt that the third shot was justified.

In sum, based on the evidence in this investigation, OSI concludes that a prosecutor would be unable to disprove beyond a reasonable doubt that Dep. Rosello's use of deadly physical force was justified under the law and will close the matter with the issuance of this report.

RECOMMENDATION

OCSO, and all police agencies, should equip officers with BWCs and cars with dashboard cameras, and implement polices and training to ensure effective use.

OSI has issued many reports recommending that law enforcement agencies equip officers with BWCs and police cars with dashboard cameras. As noted above, OSI's investigation revealed that, although Dep. Rosello was equipped with a BWC, he did not activate it before or during the incident. Further, Axon representatives told OSI that, based on Dep. Rosello's Axon audit log, his car's dashboard camera was activated at 6:19 a.m. due to a wireless trigger – likely Dep. Rosello turning on his emergency lights while responding to Danzig St. and Poznan Ave – and was stopped at 6:21 a.m., before he arrived at the parking lot, due to manual use of a button on the camera that stops it from recording. The shooting incident was captured in part by a home security camera, but that video was from a distance and was partially blocked by Dep. Rosello's car. Had Dep. Rosello activated his BWC or allowed his dashboard camera to continue recording there almost certainly would have been a much clearer picture of the incident, from Dep. Rosello's vantage point, including the moments leading up to Dep. Rosello's first shot and the proximity of the Hyundai to Dep. Rosello during the shooting.

During the investigation, OCSO Chief Police Deputy Matthew Fischer told OSI that, at the time of the incident, OCSO's BWC policy was in the process of being developed from a "Special Order" to a fully implemented policy, and that OCSO did not yet have a dashboard camera policy in place. Chief Fischer also explained that not all of the agency's dashboard cameras had been installed yet, and the ones that had been installed, including the camera in Dep. Rosello's car, were being used to troubleshoot issues and were not fully operational. Chief Fischer said there had not yet been any formal training for OCSO members regarding the use of the dashboard cameras.

Chief Fischer said that, at the time of the incident, OCSO had already begun discussions with the supplier, Axon, to implement the use of "signal sidearm" devices (which the previous Onondaga County Sheriff reportedly declined, https://cnycentral.com/news/local/whats-the-culture-around-body-camera-use-at-the-onondaga-county-sheriffs-office) to ensure that a deputy's BWC and/or dashboard camera automatically activates and records whenever the deputy removes his or her firearm or Taser from its holster.

While OSI recognizes that following this incident, OCSO took significant steps to address the shortcomings in its BWC and dashboard camera equipment and policies (see Training, new equipment address sheriff's body camera problems exposed after deputy shot 2 teens - syracuse.com), OSI nonetheless uses this opportunity to once again highlight the importance of proper implementation of BWC and dashboard cameras, as well as policies regarding their

use, and continues to recommend that law enforcement agencies equip officers and cars with BWCs and dashboard cameras, and that they fully implement policies and training regimens surrounding the proper use of these cameras to ensure that police interactions such as these are captured.

Dated: March 21, 2025