Office of the New York State Attorney General Letitia James
Office of Special Investigation

May 29, 2025

Report on the Investigation into the Death of Bashe McDaniel

OVERVIEW

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 or a peace officer, as defined. When OSI, as in this case, does not seek charges, Section 70-b requires OSI to issue a public report. This is the public report of OSI's investigation of the death of Bashe McDaniel, who was shot and killed on December 29, 2023, by Metropolitan Transportation Authority Police Department (MTAPD) Officers John D'Ambrosio and Jonathan Thangavelu. Having thoroughly investigated the matter and analyzed the law, OSI will not seek charges against the officers because it concludes a prosecutor would not be able to disprove beyond a reasonable doubt that their use of deadly force against Mr. McDaniel was justified under New York law.

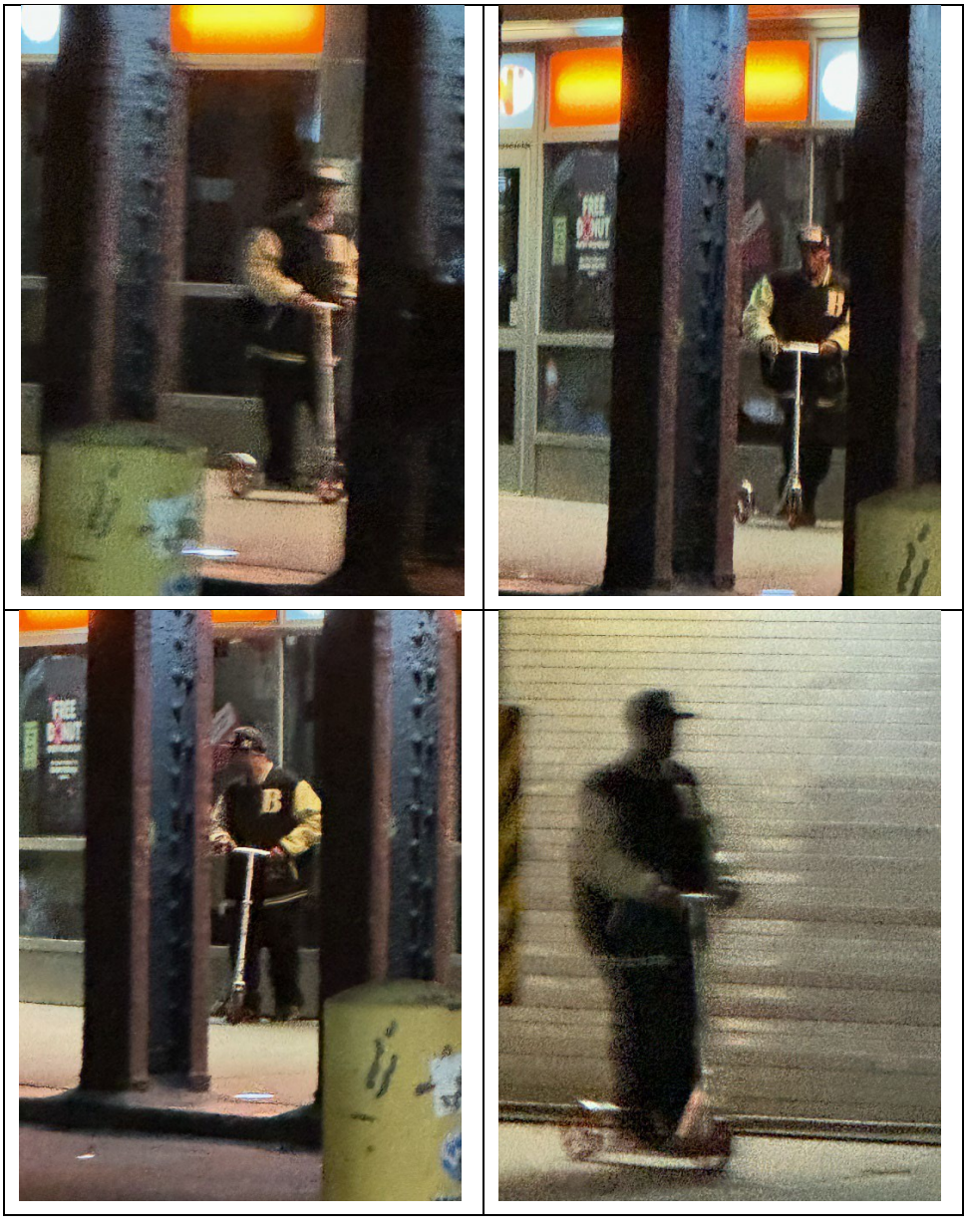
On December 29, 2023, at 10:00 p.m., Witness 1 was walking on Sutphin Boulevard near the Long Island Railroad Station in Jamaica, Queens, when Mr. McDaniel blocked her path with a scooter he was riding and placed his hand on her breast. (OSI does not publish the names of civilian witnesses.) Witness 1 walked away, took photos of Mr. McDaniel from across the street, and went to the District 3 MTAPD office and reported the incident. She provided the photos she took of Mr. McDaniel, which were then given to officers who began canvassing the area for him. Officers D'Ambrosio and Thangavelu encountered Mr. McDaniel on Sutphin Boulevard near 91st Avenue and recognized him as the person in the photos. When the officers attempted to apprehend Mr. McDaniel, he pulled away and refused to be placed in handcuffs. In the ensuing struggle the officers and Mr. McDaniel fell to the ground, Mr. McDaniel started reaching for a firearm in his waistband and shot himself. The officers jumped back, and Mr. McDaniel rolled onto his back and pointed the firearm toward Officer D'Ambrosio. Both officers fired several rounds at Mr. McDaniel, striking him in the head and torso. Mr. McDaniel was transported to Jamaica Medical Center where he was pronounced dead. A loaded 9-millimeter machine pistol and extended magazine were recovered from Mr. McDaniel.

FACTS

Interview of Witness 1

OSI and MTAPD Detectives interviewed Witness 1. Witness 1 also gave a written statement about the incident, see exhibit 1. Witness 1 said she was walking home from work on Sutphin Boulevard toward 94th Avenue when she saw Mr. McDaniel steer his scooter right behind her. Witness 1 took out one ear pod and kept walking. Mr. McDaniel then got in front of her and blocked her path with his scooter and touched her breast. Witness 1 pushed his hand away, and Mr. McDaniel said he meant no disrespect and that she was very beautiful, and he wanted to do her. Witness 1 Walked away,

and Mr. McDaniel followed her. Witness 1 told Mr. McDaniel she was going to tell the the police, and he laughed and said he would be right there waiting for them. Witness 1 took several pictures of Mr. McDaniel as she walked toward the MTA Police Station, at the Long Island Railroad Jamaica Station. Witness 1 reported the incident to MTAPD officers and provided them with her photos of Mr. McDaniel. When OSI detectives interviewed Witness 1 a second time she said she had told the officers she saw an extended magazine in Mr. McDaniel's waistband.



Four photos taken by Witness 1 and given to MTAPD officers.

Officer Interviews

Officer D'Ambrosio

Officer D'Ambrosio told OSI that he was in the MTA Police Station when Witness 1 came in and said she was forcibly touched by a man she did not know. Witness 1 provided high quality pictures of the man and his distinctive clothing. Officer D'Ambrosio said he and Officer Thangavelu began canvassing for the man on Sutphin Boulevard, saw Mr. McDaniel, and noticed he was wearing the same clothing as the man in the photos from Witness 1. Mr. McDaniel then approached the officers and started asking them questions, but Officer D'Ambrosio did not remember what was said. Officer Thangavelu reviewed the photos on his department cell phone and confirmed that Mr. McDaniel was the same person. The officers then attempted to place him in handcuffs so they could conduct an identification procedure with Witness 1. Officer D'Ambrosio said Mr. McDaniel resisted by pulling away from the officers and not giving them his arms. Officer D'Ambrosio saw Mr. McDaniel reaching toward his waistband but did not see a weapon. Both officers repeatedly told Mr. McDaniel to stop resisting.

The officers and Mr. McDaniel fell to the ground. Mr. McDaniel continued to reach for his waistband. Officer D'Ambrosio still did not see a weapon. Officer D'Ambrosio heard his partner warning Mr. McDaniel that he was going to get Tased if he did not comply. Officer D'Ambrosio heard a Taser being used and then heard a gunshot and could smell gun powder. Officer D'Ambrosio tried to stand up but fell backward onto the sidewalk. As he was falling he saw Mr. McDaniel roll onto his back and point a gun directly at him. Officer D'Ambrosio was unable to shoot because his firearm was holstered but heard Officer Thangavelu firing his weapon. Officer D'Ambrosio stood up and unholstered his weapon but did not shoot. Mr. McDaniel rolled toward Officer D'Ambrosio and pointed the weapon at him again. Officer D'Ambrosio fired his weapon several times. He said did not know how many times he shot.

Officer Thangavelu

Officer Thangavelu was in the Jamaica Long Island Railroad police station when Witness 1 reported she had been forcibly touched by a man she did not know. Witness 1 provided the officers with high quality photos of the man who assaulted her. Officer Thangavelu said he and Officer D'Ambrosio began canvassing on Sutphin Boulevard for the man. Mr. McDaniel approached them and asked what they were doing. While they were talking with Mr. McDaniel, Officer Thangavelu looked at the pictures provided by Witness 1 and confirmed he was the man in the pictures. Officer Thangavelu attempted to apprehend Mr. McDaniel, who resisted by flailing his arms and refusing to be handcuffed. The officers and Mr. McDaniel fell to the ground where he continued to resist. Officer Thangavelu pulled on Mr. McDaniel's right arm and warned him that he would be Tased if he did not comply. Mr. McDaniel continued to resist and started reaching for something in his waistband. Officer Thangavelu Tased Mr. McDaniel several times when he did not comply.

Despite being Tased, Mr. McDaniel continued to reach for his waistband. Officer Thangavelu heard a gunshot and immediately jumped back. When he stood up, he saw Officer D'Ambrosio falling backward as Mr. McDaniel pointed a gun directly at him (Officer D'Ambrosio). Officer Thangavelu shot Mr. McDaniel several times.

Body Camera Footage

Officer D'Ambrosio's and Officer Thangavelu's body cameras were activated and recorded the incident, (Officer D'Ambrosio) (Officer Thangavelu). The videos showed the officers interacting with Mr. McDaniel prior to camera activation. (Body worn cameras operate in a pre-event buffering mode prior to activation, recording video without audio; when an officer activates the camera, the camera saves the video from the minute prior to activation.) The videos showed that Mr. McDaniel's clothing matched the photos provided by Witness 1 and that the scooter she described was leaning against a gated doorway.

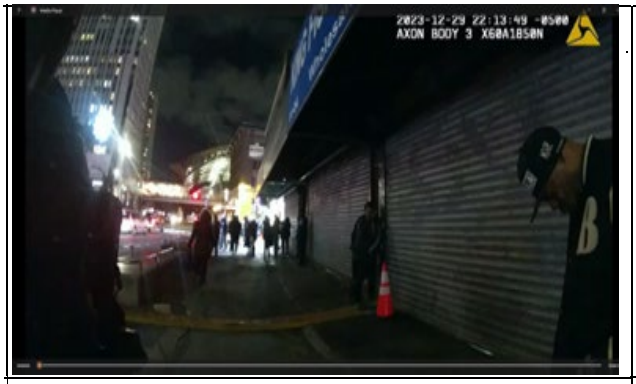


Image from Officer D'Ambrosio's Body Camera

Image from Officer Thangavelu's Body Camera

The videos showed Officer Thangavelu looking at his cell phone to compare the images provided by Witness 1 to Mr. McDaniel.

Image from Officer Thangavelu's Body Camera

Officer Thangavelu signaled to Officer D'Ambrosio that they had the correct person and the officers attempted to place him under arrest. Mr. McDaniel pulled away from the officers and resisted arrest by refusing to give the officers his arms. Mr. McDaniel and the officers fell to the sidewalk. While on the ground, Mr. McDaniel refused to be placed in handcuffs and lay on top of his right arm. Officer Thangavelu took out his Taser and warned Mr. McDaniel several times that he was going be Tased. Officer Thangavelu Tased Mr. McDaniel several times when he failed to follow instructions.

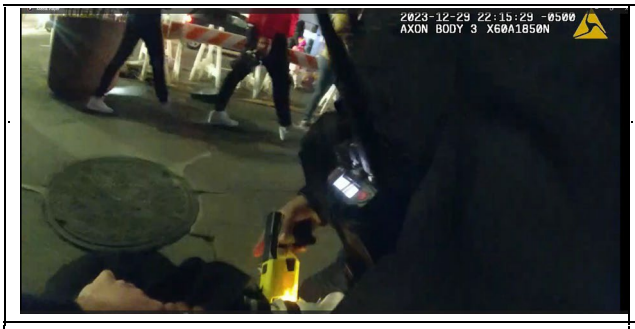


Image from Officer D'Ambrosio's Body Camera

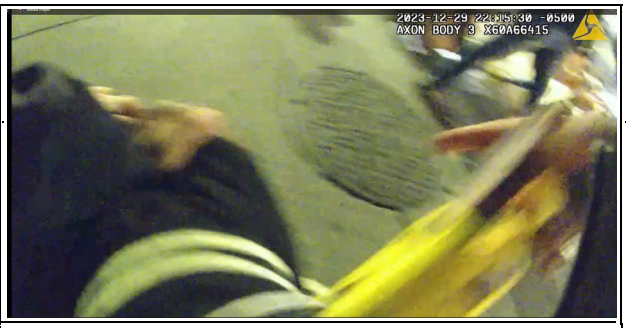


Image from Officer Thangavelu's Body Camera

After Officer Thangavelu Tased Mr. McDaniel, the body cameras captured the sound of a gunshot and the sound of a scream from Mr. McDaniel. The cameras showed the officer's hands and showed that neither officer was holding a firearm at that moment.

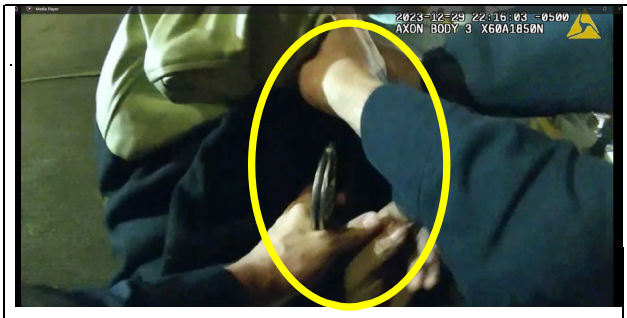


Image from Officer D'Ambrosio's Body Camera

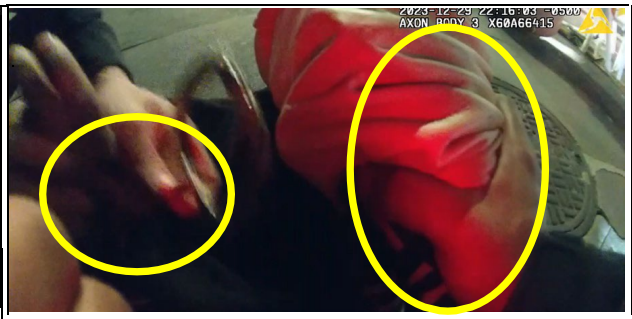


Image from Officer Thangavelu's Body Camera

Both officers jumped away from Mr. McDaniel. Officer Thangavelu stood up, while Officer D'Ambrosio fell backward. Mr. McDaniel rolled onto his back and pointed a firearm at Officer D'Ambrosio. Officer Thangavelu fired two rounds.

Image from Officer D'Ambrosio's Body Camera

Image from Officer Thangavelu's Body Camera

Officer D'Ambrosio stood up and unholstered his weapon. Mr. McDaniel rolled toward Officer D'Ambrosio and pointed the gun at him again. Both officers fired several rounds at Mr. McDaniel until he was no longer moving. The officers requested help over the police radio.

Image from Officer D'Ambrosio's Body Camera

Image from Officer Thangavelu's Body Camera

Several officers arrived. Officer Sean Seemengal ran to the location and removed an extended magazine from Mr. McDaniel's waistband and a firearm from under his body.

Images from Officer Seemengal's Body Camera

Security Video

OSI reviewed video from a security camera at 91-06 Sutphin Boulevard, which captured the entire interaction between the officers and Mr.McDaniel (here). The video showed the officers walk past Mr. McDaniel on Sutphin Boulevard. Mr. McDaniel approached the officers and appeared to be talking with them. Mr. McDaniel pulled away from the officers when they attempted to place him in handcuffs, causing them to fall to the ground. While on the ground, Mr. McDaniel continued to fight with the officers. The officers jumped away from Mr. McDaniel. Officer Thangavelu stood up while Officer D'Ambrosio fell backward. Both officers fired their weapons at Mr. McDaniel as he rolled on the ground. Mr. McDaniel lay motionless on the ground while several other officers arrived.

Physical Evidence

Detectives from the New York City Police Department's Crime Scene Unit (CSU) responded and processed the scene by photographing and recovering physical evidence.

Officer Firearms

CSU Detectives inspected and photographed the firearms used in the incident.

Officer D'Ambrosio was equipped with a Glock 19 Generation 4 firearm and two Glock magazines with 15 cartridge capacities (one magazine was in the firearm and one was a spare he carried). CSU recovered 25 unfired 9 MM cartridges: one cartridge was chambered in the firearm, the spare magazine was loaded to capacity, and the magazine from the firearm was loaded with 9 cartridges. The 10 cartridges from the gun indicated that Officer D'Ambrosio fired six rounds during the incident, assuming his magazine was fully loaded and one round had already been chambered in the gun.

Officer Thangavelu was equipped the same way as Officer D'Ambrosio. CSU recovered 27 unfired 9 MM cartridges: one cartridge was chambered in the firearm, one magazine was loaded to capacity; and one magazine was loaded with 11 cartridges. The 12 cartridges from the gun indicated that Officer Thangavelu fired four rounds during the incident, under the same assumptions as above.

Mr. McDaniel's Firearm and Extended Magazine

CSU Detectives recovered a black 9 MM Masterpiece Firearm that was under Mr. McDaniel and the extended magazine that was removed from his waist band. The extended magazine was loaded with 12 rounds of ammunition including six Winchester 9 MM luger cartridges with brass casing and brass primer; three Blazer 9 MM luger cartridges with brass casing and white primer; Winchester 9 MM luger cartridge with black casing and white primer; one Aguila 9 MM luger cartridge with brass casing and white primer; and one R-P 9 MM luger cartridge with brass casing and brass primer.

Crime Scene Unit photos of gun, magazine, and ammunition recovered from Mr. McDaniel.

Ballistics Evidence

At the scene of the shooting, CSU detectives recovered three bullet fragments (two lead fragments and one copper fragment), one deformed copper bullet, and 11 discharged shell casings, including 10 FC 9 MM luger shell casings with white casing and white primer consistent with MTAPD ammunition, and one Winchester 9 MM shell casing with a white casing and brass primer inconsistent with MTAPD ammunition Additionally, CSU recovered three live cartridges – two blazer 9 MM cartridges and one PMC 9 MM cartridge – inconsistent with MTA ammunition.

Jamaica Hospital Medical Center

Mr. McDaniel was transported to Jamaica Hospital Medical Center where he was pronounced dead at 11:20 p.m. by Dr. Zou. OSI interviewed Dr. Zou who said she treated Mr. McDaniel after he was brought to the operating room. Dr. Zou observed numerous gunshot wounds about his head and body and pronounced him dead.

Autopsy

Dr. Mary K. Schwerdt of the New York City Office of the Chief Medical Examiner (OCME) performed the autopsy of Mr. McDaniel on December 31, 2023. OSI reviewed the autopsy and toxicology reports. Dr. Schwerdt determined that the cause of death was gunshot wounds of head and torso with injuries of brain and lung, and deemed the manner of death to be homicide. Mr. McDaniel was shot six times, with entry wounds to the head, lateral left chest, right abdomen, right leg, and left arm.

OSI interviewed Dr. Schwerdt about whether any of Mr. McDaniel's wounds was self-inflicted. Dr. Schwerdt said she could not determine the question with certainty, but said that the bullet that entered the abdomen followed a straight-down path through the body, consistent with an accidental discharge from a weapon held close to the abdomen in a straight-down position, as though it were being drawn from the waistband. (In an autopsy, the description of a wound path is based on a body in a standing position, no matter what position the body might have been in during the event.)

LEGAL ANALYSIS

Article 35 of the New York Penal Law defines the circumstances under which a person may be justified in using deadly physical force against another. Justification is a defense, Penal Law Section (PL) 35.00, not an affirmative defense. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1).

As the Court of Appeals recently stated in *People v Castillo*, Slip Opinion, November 21, 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 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 *Heiserman*, 39 NY3d 988, 990 [2022]). Justification has both a subjective that 'defendant . . . actually believed . . .he [was]. . . threatened with the imminent 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])."
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> *Castillo*, Slip Opinion at 3 (square brackets and ellipses in the original).

In this case, the officers 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 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."

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

Based on the evidence in this investigation, 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. Under PL 35.30, Officers D'Ambrosio and Thangavelu could use the physical force they reasonably believed necessary to effectuate the arrest of Mr. McDaniel and could use deadly force if they reasonably believed it was necessary to defend themselves or another against Mr.McDaniel imminent use of deadly force.

Officers Thangavelu and D'Ambrosio were attempting to apprehend Mr. McDaniel after receiving credible information from a witness that he had forcibly touched her, with photos provided by the witness showing Mr. McDaniel's distinctive clothing. This information provided them with reasonable cause to believe that Mr. McDaniel had committed the offense of Forcible Touching, PL 130.52(1), a class A misdemeanor. When the officers attempted to apprehend Mr. McDaniel he resisted arrest by pulling away and refusing to be placed in handcuffs. During the struggle, Mr. McDaniel removed a loaded firearm from his waistband and shot himself in the process, and twice pointed the firearm at Officer D'Ambrosio, giving the officers reasonable cause to believe he was committing the crime of Criminal Possession of a Weapon in the Second Degree with the intent to use unlawfully against another, PL 265.03 (1).

Under these circumstances, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that Officer D'Ambrosio and Officer Thangavelu were justified in shooting Mr. McDaniel. Therefore, OSI will not seek charges and closes the matter with this report.

Dated: May 29, 2025

EXHIBIT 1

Metropolitan Transportation Authority
POLICE DEPARTMENT

VOLUNTARY STATEMENT - STATE OF NEW YORK

CASE NO.: 23-23116 LOCATION: 93-31 Sutphin Blvd Jamaica, NY 11435

DATE: 12-29-2023 TIME: 10:00pm

I [redacted]

make the following true statement of my own free will, knowing that false statements made herein are punishable by a Class "A" Misdemeanor pursuant to Section 210.45 of the New York State Penal Law:

As I walked down Sutphin Blvd a male approx 5'8" wearing a black leather jacket with gold sleeves, was on a scooter steers right behind me. I lowered my hearing device and took an earpod off, the man proceeded to place his scooter to block my way and touched my lower boob on top of my jacket. I push the man away and he told me 'I mean no disrespect, I just find you very beautiful and sexy. I want to do you.' I told the man off and he kept following me with his scooter. 'I'm going accross the street to the police' I yelled at him, he responded "it's okay i'm going to be right here, waiting." I yelled at him to "F**k off." I cross the Sutphin LIRR underpass towards the MTA police station and the black male who was about late 30's laughed. I pulled out my phone from my pocket and began to take pictures of him, which he laughed at. After taking pictures and entering the station by Tim Hourton the man with his scooter drove to the glass windows and laughed to which I gave him the middle finger. Then I walked into the MTA police lobby and spoke with the front desk officer about what had happen and showed them the pictures I had taken of the man and his scooter, the officer then sent out a search after asking 'would you like to place a report?' and I said 'yes' as a survivor I have anxiety, PTSD, and Depression. The police officers squads

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature and corrections, if any, bearing my initials, and I certify that the facts [redacted]

Date: 12/29/2023

Witness: [redacted]
(Print Name) (Signature)

Witness: P.O Kenn. Yau
(Print Name) (Signature)

Metropolitan Transportation Authority
POLICE DEPARTMENT

VOLUNTARY STATEMENT - STATE OF NEW YORK

CASE NO.: 23-23116 LOCATION: 93-31 Sutphin Blvd Jamaica, NY 11435

DATE: 12-29-2023 TIME: 10:00pm

I [redacted]

make the following true statement of my own free will, knowing that false statements made herein are punishable by a Class "A" Misdemeanor pursuant to Section 210.45 of the New York State Penal Law:

began to leave the station and catch the male individual which was armed and caused distress to more officers because he wanted to touch me more than my boob area.
The suspect fled on scooter in direction to the LIRR tracks sidewalk underpass laughing.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bearing my initials, and I certify that the facts conta[redacted]

Date: 2023-29-12

Witness: [redacted]

Witness: P.O Kenni Yam
(Print Name)

(Signature)

(Signature)