August 22 , 2024

Report on the Investigation into the Death of C.W., a Minor

OVERVIEW

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 a police officer or peace officer causes the death of a person. When OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of CW, a minor, who was shot by a New York State Trooper on November 15, 2023, and pronounced dead a short time later.[1]

On November 15, 2023, the New York State Police (NYSP) received an anonymous report, which read in part, "My friend is talking about killing someone next week he is 100% serious about this and he will act on it." The reporter gave an address on State Route 64 in the Town of East Bloomfield, in Ontario County. Trooper Adam Latulipe went to the address to conduct a welfare check, arrived at 6:41 p.m., and activated his body-worn-camera (BWC).

The BWC showed that a woman came to the door of the house, and that Trooper Latulipe told her about the report he had received.[2] The woman called over to CW, and asked him if he had called the state police. CW came to the doorway and then stepped outside onto the small porch by the door. Trooper Latulipe told CW to take his hand out of his pocket. The BWC showed that CW pulled out a folding tool open to a knife blade. CW came at Trooper Latulipe, who moved quickly off the porch. Trooper Latulipe and CW fell to the ground. CW got up and charged at Trooper Latulipe, who fired six shots at CW. CW fell to the ground. Trooper Latulipe radioed "shots fired, send back-up," and called for EMS.

Deputies from the Ontario County Sheriff's Office (OSCO) and other NYSP Troopers responded, began to provide medical aid, and requested EMS. EMTs from East Bloomfield and Canandaigua Emergency Squad (CES) arrived and took over the life-saving efforts. Shortly afterward, a CES EMT called a doctor at a nearby hospital for consultation, who directed them to cease life saving measures. The Ontario County Coroner arrived and formally pronounced CW dead, at 1:33 a.m. At a later time, the medical examiner determined that gunshots to the head and chest caused the death of CW.

Having thoroughly investigated the matter and analyzed the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that Trooper Latulipe's use of deadly force against CW was justified under New York Law, and therefore will not seek charges in this case.

[1] The decedent in this case was 17 years old at the time of his death, Because he was a minor OSI is not publishing his name or exact address.

[2] The woman, referred to in this report as Witness A, was CW's grandmother.

FACTS

Background

On November 15, 2023, Trooper Latulipe had been with NYSP for three years and ten months, and was on duty in his standard NYSP uniform. When he arrived at the house the weather was clear and the sky was dark. The house had a porch light, but no other outside lighting, and there were no nearby streetlamps. Trooper Latulipe parked his car in the driveway with the headlights on. Latulipe was wearing and had activated his NYSP-issued BWC.

Crime Scene photo after the shooting, showing Trooper Latulipe's car in the driveway and the porch light.

Crime Scene photo after the shooting, showing Trooper Latulipe's car in the driveway and the porch light.

Crime Scene photo after the shooting, showing the porch stoop and light.

The Original Report

An electronic message was received at 5:03 p.m. on November 15, 2023, by the New York Division of Homeland Security. The message was sent anonymously through a gaming platform, from an IP address randomly assigned by a service provider to the platform's users. Homeland Security relayed the message to the New York State Intelligence Center (NYSIC), which relayed it to NYSP. The message included the statements, "My friend is talking about killing someone next week he is 100% serious about this and he will act on it" and included an address on State Route 64 in the Town of East Bloomfield, in Ontario County. NYSP Sergeant Shaun Flood received the report from NYSIC and dispatched Trooper Latulipe to the address.

In a statement provided to NYSP after the incident, Sgt. Flood said that NYSIC told him that checks on the address did not yield "any negative information." Sgt. Flood said he contacted Ontario County dispatch and asked if there was any history in their database for the address that might raise an officer safety concern, and said the dispatcher reported there was no law enforcement history at the address.[3] Apart from the quoted words of the report, there is no evidence that NYSP had reason to believe that the report involved a person in a mental health crisis.

The Shooting

As shown by BWC,[4] Trooper Latulipe walked to the door shown in the photos above and a woman, Witness A,[5] came to the door. Trooper Latulipe identified himself as "state police" and said, "We got a tip that, um, someone is not doing too well, right now, from this address." Witness A called to CW by his first name and asked him if he had called the state police. A young man, CW, appeared by the entrance, and asked Trooper Latulipe, "Do you want me to step out?" Trooper Latulipe said, "Yeah, if you don't mind." CW came out and stood on the porch by the door. Trooper Latulipe asked, "So, how you doing, you okay?" CW said, "Yeah, I'm fine." Trooper Latulipe said, "So, we got, I'll cut to the chase – can you keep your hand outta your pocket for me?"

BWC showed that CW took his left hand out of his pocket, which was holding a folding tool with the knife blade open; he transferred it to his right hand; Trooper Latulipe moved quickly off the porch as CW came at him. Trooper Latulipe shoved CW and yelled, "What the fuck." Trooper Latulipe and CW fell to the ground and, as each attempted to get up, CW charged toward Trooper Latulipe and Trooper Latulipe used his handgun to fire six shots at CW, who fell to the ground. The time from the folding tool's appearance on BWC until the last shot fired

[3] Sgt. Flood refused OSI's request for an interview. His statements are taken from a formal statement he made to NYSP after the shooting. See the section of this report, below, headed "Witness Statements."

[4] Trooper Latulipe's BWC can be viewed here: Tpr. Latulipe BWC. Pursuant to OSI's published video release policy, OSI has redacted the video footage to blur the images of CW and Witness A.

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

was nine seconds. Trooper Latulipe radioed, “shots fired, send back-up.” Trooper Latulipe told Witness A, “He tried stab me.” Witness A asked, “Do we need an ambulance?” Trooper Latulipe then radioed, “Send EMS, have one at gunpoint.” Trooper Latulipe told Witness A, “Stay right there, I have EMS coming.”

Still from BWC, showing CW transferring the folding tool, with the knife blade open, from his left hand to his right hand.

A second still from BWC, showing the folding tool in CW’s hands.

Still from BWC, showing Trooper Latulipe moving backward off the porch and trying to grab CW's hands.

Still from BWC, showing the folding tool in CW's hand (circled).

Witness A came through the doorway, and Trooper Latulipe ordered her to sit down on the porch and stay there. During the time it took other officers from OCSO and NYSP to arrive Trooper Latulipe kept his flashlight and gun pointed at CW.

At 6:51 p.m., as OCSO Deputy Robert Griffin escorted Witness A from the area, his BWC showed the folding tool on the ground between the porch and CW's body.

Still from OCSO Deputy Griffin's BWC at 6:51 p.m., showing the folding tool on the ground (circled), near the body of CW.

At 6:53 p.m., Trooper Latulipe's BWC and Trooper Cyle Alcorn's BWC showed Trooper Latulipe picking up the folding tool from the ground, near the officers who were aiding CW, and moving it to the porch.

Still from Trooper Latulipe's BWC at 6:53 p.m., showing him picking up the folding tool from the ground.

Still from Trooper Alcorn's BWC, showing Trooper Latulipe picking up the folding tool from the ground.

Interviews Attempted by OSI

OSI requested interviews with NYSP Sergeant Shaun Flood, and NYSP Troopers Adam Latulipe and Cyle Alcorn. Each refused to meet with OSI or cooperate with OSI's investigation. Witness A did not respond to OSI's repeated requests for an interview.

Witness statements[6]

NYSP Sergeant Shaun Flood

In Sergeant Shaun Flood's statement, he said he spoke to NYSP Investigator Philip Nimphius of NYSIC, who said NYSIC had just received an anonymous tip that a person residing at an address on State Route 64 in East Bloomfield had threatened to harm people. Sgt. Flood said he contacted Trooper Adam Latulipe around 5:50 p.m. and told him to perform a welfare check at the house, providing Trooper Latulipe with the information from Inv. Nimphius. Sgt. Flood said Trooper Latulipe contacted him around 6:35 p.m. saying he was at the address

[6] Except for Sergeant Flood's, Troopers Petrosino's and Alcorn's statements, all the statements in this section were interviews with NYSP investigators, which were then typed up. The witnesses reviewed and signed the written statements. In the signature block of each written statement was the declaration, "Affirmed under penalty of perjury." Sergeant Flood's, Troopers Petrosino's and Alcorn's written statements included a form called "Compelled Member Witness Statement Notice," which said in part, "… you are being ordered to provide an accurate account, in the context of a criminal investigation, of your actions….Failure or refusal to provide this account will subject you to disciplinary action for disobeying a lawful order." In other respects, Sergeant Flood's, Troopers Petrosino's and Alcorn's statements were like the other statements: they gave interviews to NYSP investigators, which were then typed up; they reviewed and signed the statements; in the signature blocks of the written statements was the declaration, "Affirmed under penalty of perjury."

and saw a light on inside and a car in the driveway. Sgt. Flood said he told Trooper Latulipe to make contact with any people who might be there.

Witness A

In Witness A's statement, she said that around 6:30 pm there was a knock at the side door. "There was a Trooper there, and he said he got a mental health call, and asked if I was alone." Witness A said CW was standing next to her in the foyer area, and the Trooper asked CW to step outside. CW stepped out onto the step. Witness A said, "The next thing I know is [CW] lunged toward the Trooper, and I heard three shots. I saw a knife, like a pocket-knife on the ground near [CW]." Witness A said, "I went toward [CW]," and "the Trooper told me to sit down and not go near him."

OCSO Deputy Robert Griffin

In Deputy Griffin's statement, he said that when he heard Trooper Latulipe on the radio yell "Shots fired," he began to drive toward the trooper's location. While driving, he heard Trooper Latulipe on the radio say that he was holding "a male at gunpoint who was unsecured." Deputy Griffin said that when he arrived he was the first officer there to assist and "drew my County issued pistol and began to approach Trooper Latulipe, who was taking cover behind a vehicle in the driveway." Deputy Griffin said he saw a man on the ground and another person sitting on a porch. Griffin said, at Trooper Latulipe's request, he "secured" the person on the porch, which he did as Deputy Christopher Millard arrived.

Deputy Griffin's BWC showed that he arrived at 6:50 p.m. He went to Witness A, who was sitting on the porch, put handcuffs on her, and escorted her to, and placed her in, OSCO Deputy Millard's car.

OCSO Deputy Christopher Millard

In Deputy Millard's statement, he said that when he heard Trooper Latulipe radio "Shots fired," he "immediately started heading that way." Deputy Millard said he saw a person "on the porch of the residence," and "provided cover to Deputy Griffin" as he detained that person, who was then "placed in the rear of my patrol car." Millard said, "Trooper Latulipe stated the suspect had a knife," and the person on the ground appeared to be "breathing at that time." Deputy Millard said, once the person "was secured and moved to his side I checked for breaths and a pulse which I did not detect. I went to my vehicle and grabbed the AED"[7] and returned to provide medical assistance to the person the ground, just as the ambulance personnel were taking over life-saving efforts.

[7] AEDs, or Automated External Defibrillators, are portable, life-saving devices designed to treat people experiencing cardiac arrest. The AED analyzes the heart rhythm and when appropriate it delivers, or audibly advises the user to deliver, an electrical shock to the heart to restore its normal rhythm.

Deputy Millard's BWC showed that he arrived at 6:50 p.m., got out of his car, and ran into the yard behind Deputy Griffin and Trooper Latulipe. At 6:53 p.m. he radioed for an ambulance to come, ran to get an AED and a first aid kit from his car, and returned to the person on the ground, as ambulances and medical personnel arrived, at 6:55 p.m., and took over aid.

OSCO Deputy Alex Colburn

In Deputy Colburn's statement, he said that when he arrived, Trooper Petrosino, Deputy Griffin, and Deputy Millard had secured a person on the ground. Colburn said he first went to see if Trooper Latulipe was injured, and he walked Trooper Latulipe to his car and told him to stay there. Deputy Colburn said he then went to the person on the ground. Trooper Petrosino rolled the person onto his back and they began to render aid. Deputy Colburn said he used his medical scissors to cut the person's shirt off and he saw what appeared to be two gunshot wounds. Deputy Colburn said he asked Deputy Millard to get his AED as an ambulance pulled into the driveway. Deputy Colburn said he showed the two wounds to the medical personnel and that they took over care.

NYSP Trooper Matthew Petrosino

In Trooper Petrosino's statement, he said that at 6:40 p.m. he heard Trooper Latulipe call out shots fired, send back-up. He got in the car, activated his emergency lights and siren, and started to respond to his location. Trooper Petrosino said, "While I was enroute I heard Trooper Latulipe state that he had the subject at gunpoint and that he was still breathing." Trooper Petrosino said there were other officers there when he arrived, and he saw that Trooper Latulipe and one of the deputies still had their guns pointed at a person who was face down in the grass. Trooper Petrosino said, "Latulipe told me the guy had a knife." Trooper Petrosino said, "under the impression that the subject was still alive, I approached him and handcuffed him." Trooper Petrosino said, "I rolled him over to his back and heard a deputy call for EMS to come into the scene. The deputy then ran to get the AED. I rolled the subject into the recovery position." Trooper Petrosino said, as the deputy returned with the AED, "I uncuffed the male, and the ambulance personnel took over care of the subject."

NYSP Trooper Cyle Alcorn

In Trooper Alcorn's statement he said he heard Trooper Latulipe radio, "Shots fired," and "Suspect at gunpoint." Trooper Alcorn said he drove to the house using lights and sirens and when he arrived

> "I approached the residence and saw Trooper Latulipe and another OCSO Deputy maintaining cover of the suspect who was on the ground. Trooper Petrosino was handcuffing the suspect, and moved him onto his side in a recovery position. I heard someone say, 'The knife is on the deck.' I looked over toward the house, and saw a knife on the step to the side door. The knife was kind of a multi tool type. It was blue

and silver, and had a plier on one side, and a 3-4" knife on the other end. I went back to my troop car, and grabbed gloves and an evidence bag to secure the knife. When I placed the knife in the evidence bag it cut through. I closed the blade on the knife, and secured it back in the evidence bag. I placed the bag in the trunk of [my car]. When investigators [ ] arrived, I told them about the knife and they asked where I had found it. They told me to put it back where it was, but to leave it in the evidence bag. They also told me to stay with it until I was given further instructions."

Trooper Alcorn's arrival at 6:52 p.m. and his actions after that were recorded on his BWC.

Still from Trooper Alcorn's BWC, as he was about to put the folding tool into a plastic bag.

Still from Trooper Alcorn's BWC, showing him putting the folding tool into a plastic bag.

Medical personnel[8]

NYSP interviewed responders from East Bloomfield Ambulance Squad (EBAS) and Canandaigua Emergency Squad (CES).[9]

Paramedic Betty H. Previte

Betty H. Previte, a paramedic, said she arrived on scene and saw an EMT providing chest compressions to the male patient, who was lying on his back. Paramedic Previte said she could not feel a pulse. She said life saving measures were continued for fifteen minutes until another paramedic saw a significant wound on the back of the patient's head. Paramedic Previte said she saw Paramedic Sean Reamer call "Medical Control," who deemed it appropriate to stop all life saving measures.

[8] The statements below of Paramedics Previte and Reimer were created and signed the same way as those of the civilian witness statements summarized above, except that they were handwritten rather than typed. The statement below of Captain Zaino-Brown was typed up but not signed.

[9] EBAS is a division of CES. http://www.canandaiguaes.org/. Paramedics are the most skilled emergency responders, having completed a nationally accredited paramedic program at the Certificate or Associate's degree level. https://www.health.ny.gov/professionals/ems/. Emergency Medical Technicians (EMTs) conduct basic, non-invasive interventions to save lives and reduce harm, and know how to transport patients safely. https://www.health.ny.gov/professionals/ems/.

Captain Gina Zaino-Brown

Captain Gina Zaino-Brown said she was dispatched by Ontario County at 6:43 pm to respond to the incident and, en route to the ambulance, she called Mercy Flight to put them on standby. Captain Brown said she and Gary Bidwell, the driver of the ambulance, waited after arriving for the scene to be cleared by law enforcement. Captain Brown said she saw a male patient on his back, who was not breathing and had no pulse. Captain Brown said CPR[10] was started and continued for several rounds. Captain Brown said another ambulance team responded and placed a LUCAS "thumper"[11] on the patient.

Paramedic Sean P. Reimer

Paramedic Sean P. Reimer said the male patient had what appeared to be two gunshot wounds to his chest. There were multiple crew members working on the patient, providing CPR, trying to control bleeding, and assessing heart activity and breathing. Paramedic Reimer said after another medic found the wound to the patient's head he called and consulted Doctor Scott Glick, at F.F. Thompson Hospital, to check for further medical instructions. They discussed the male's condition fully and Dr. Glick advised to cease all life saving measures and gave orders for a field termination, and all life saving measures were stopped.

Coroner

According to NYSP records, on November 16th, 2023, Ontario County Coroner Terri Haskins arrived, examined the body of CW, and pronounced him dead at 1:33 a.m.

Medical Examiner

On November 16, 2023, Dr. Chelsea P. Milito, of the Monroe County Office of the Medical Examiner, performed the autopsy of CW. In her final report, Dr. Milito concluded that the cause of death was multiple gunshot wounds to the head and chest, and deemed the manner of death to be "homicide." The examination revealed five gunshot wounds of CW's arm, chest, and head; the fatal wounds damaged his lung and brain.

LEGAL ANALYSIS

Article 35 of the New York Penal Law defines 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).

[10] Cardiopulmonary resuscitation (CPR) is a lifesaving technique for persons whose breathing or heartbeat has stopped. CPR involves repeated compression of a patient's chest, to attempt to restore blood circulation and breathing. https://www.mayoclinic.org/first-aid/first-aid-cpr/basics/art-20056600

[11] A "LUCAS" device is a mechanical automated chest compressor. https://www.lucas-cpr.com/resources/

The defendant is entitled to have the jury instructed on the defense of justification even if the defendant does not offer evidence, as long as the defense is implied by the prosecutor's evidence, *People v. Padgett*, 60 NY2d 142 (1983); *People v Steel*, 26 NY2d 526 (1970).

As detailed below, based on the evidence in this investigation, a prosecutor would be unable to disprove beyond a reasonable doubt that Trooper Latulipe's use of deadly physical force was justified.

PL 35.30 is the provision defining justification when a police officer or peace officer uses force to make an arrest and provides, in part:

> "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 Section 35.30 are under no duty to retreat when threatened with deadly physical force, PL 35.15(2)(a)(ii).

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

Under PL 35.30, the officer who uses deadly physical force is justified when the officer reasonably believes deadly force is necessary to defend the officer, or another person, against the imminent use of deadly physical force. "Reasonable belief" means that a person actually believed, "honestly and in good faith," that physical force was about to be used against him and that physical force was necessary for self-defense (subjective component), and it means that a "reasonable person" under the same "circumstances" could have believed the same (objective component). *People v. Goetz*, 68 NY2d 96 (1986); *People v. Wesley*, 76 NY2d 555 (1990). Therefore, when using deadly force in self-defense, (a) the officer must in good faith believe deadly force is about to be used against them and that deadly force is necessary for self-defense, and (b) a reasonable officer under the same circumstances could believe the same.

In this case, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Trooper Latulipe reasonably believed that deadly physical force was

necessary to defend himself from what he reasonably believed to be the use or imminent use of deadly physical force by CW. Trooper Latulipe's BWC showed that CW took a knife from his pocket and came at the trooper. It showed that the trooper fell and that CW charged at him with the knife. The BWC later captured Trooper Latulipe telling Witness A, "He tried to stab me." Witness A, in a statement, corroborated these facts. The knife was recovered.

Based on the investigation and the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Trooper Latulipe's actions were justified under New York. OSI therefore will not seek charges and closes the matter with the issuance of this report.

Dated: August 22 ,2024