Office of the New York State Attorney General Letitia James

Office of Special Investigation

February 26, 2025

Report on the Investigation into the Death of Daniel Rivera

OVERVIEW

New York Executive Law Section 70-b (Section 70-b) directs 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 against the officer, Section 70-b requires OSI to issue a public report describing its investigation. This is the public report of OSI's investigation into the death of Daniel Rivera, who was shot on December 4, 2022, by members of the New York City Police Department (NYPD), in Bronx County, and died the next day.

On December 3, 2022, shortly before midnight, NYPD officers from the 30th Precinct, which is in Manhattan, responded to a radio run of a car being broken into near 150th Street and Amsterdam Avenue. After the responding officers were told by other officers already on the scene that one person was in custody and others had fled, they began to drive in search of the people who had fled and saw a blue Hyundai driving in reverse the wrong way on a one-way street without its headlights on. Officers activated their lights and siren and unsuccessfully attempted to pull the car over. The officers ran the Hyundai's license plate and saw that the car had been reported stolen, so they continued the pursuit, though without lights and siren.

The officers pursued the Hyundai from Manhattan into the Bronx, lost sight of it, but then saw it, unoccupied, on West 161st Street in the Bronx, rolling down a hill toward Ogden Avenue, where it eventually crashed into a parked car. The officers saw two people at the top of the hill and pursued them on foot. One officer arrested one of the people on West 161st Street and another officer pursued the other person, later identified as Mr. Rivera, across a foot bridge over the Major Deegan Expressway. Mr. Rivera turned and appeared to fire a gun at the pursuing officer, twice, and ran into a wooded area alongside the highway. The officer returned fire once, but did not run into the wooded area.

Officers from the 44th Precinct, which is in the Bronx, responded to the wooded area to search for Mr. Rivera, and saw him lying face down among the leaves on the ground. Mr. Rivera began to get up, and officers saw what appeared to be a silver gun in his hand, pointed at them. Four officers fired their guns, striking Mr. Rivera. Mr. Rivera later died of his wounds. Officers recovered two weapons that appeared to be firearms but were in fact pistols capable only of firing blanks.

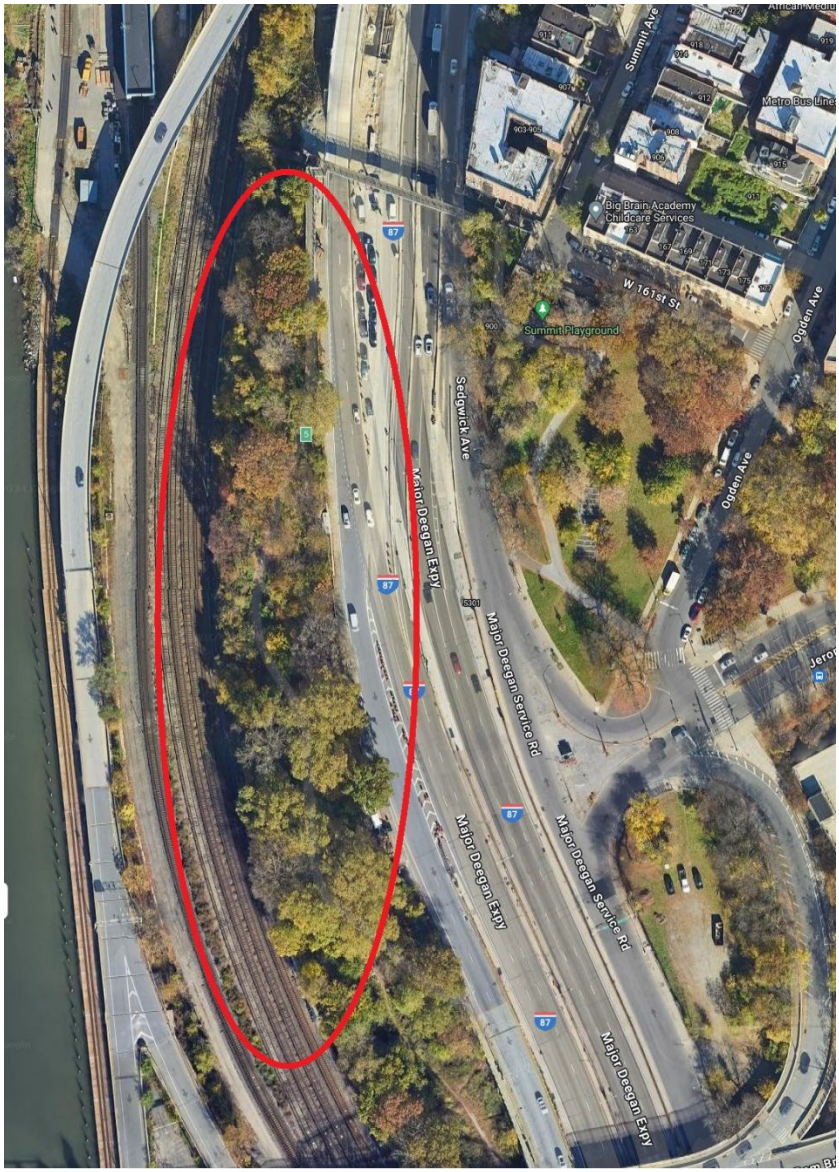
Having thoroughly investigated the facts and analyzed the law, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly

physical force against Mr. Rivera was justified under New York law. Therefore, OSI will not seek charges against them and closes the matter with this report.

FACTS

The Scene

The shooting occurred in a wooded area along the west side of the Major Deegan Expressway in the Bronx, which is accessible by a footbridge over the highway from West 161st Street. In the aerial photo below, the wooded area is in the red oval and the footbridge is toward the top of the photo:



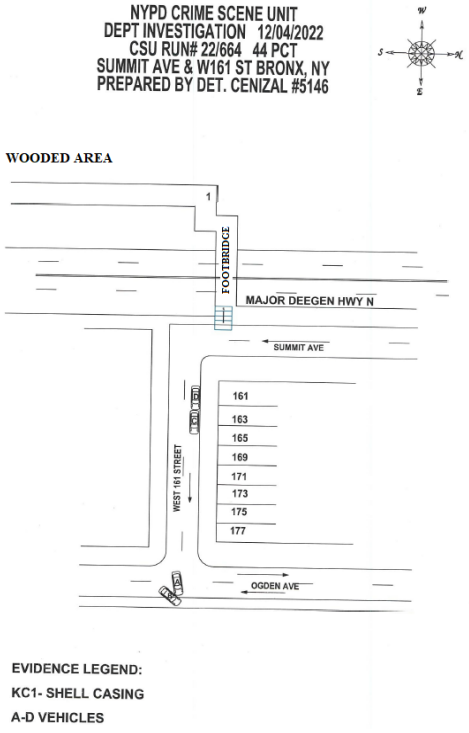
Aerial view of the wooded area where the shooting occurred, from Google Maps

Events Leading to the Shooting

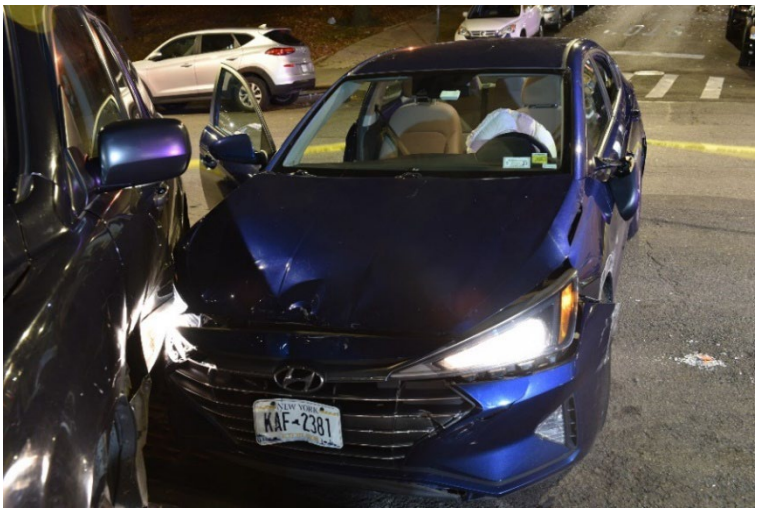
The facts in this section are based on OSI's interviews of Sergeant Michael Woloski, Detective Robert Lenihan, and Officer Yorky Burgos of the 30th Precinct.

The officers said that in the late evening of December 3, 2022, Sgt. Woloski, who was in the stationhouse, received a radio run of a car being broken into near 150th Street and Amsterdam Avenue. He drove to 150th Street and Amsterdam Avenue with and Det. Lenihan, and officers already on scene told them they had one person in custody and that other people had fled; the officers providing this information did not know how many people had fled and did not say how they fled. Sgt. Woloski and Det. Lenihan went back to their police car, and Officer Burgos arrived and got into the car with them. Det. Lenihan drove in search of the people who had fled.

As the three officers searched, they saw a blue Hyundai Sonata and, although it did not match any information the three officers had at that point, they saw it driving in reverse the wrong way on a one-way street with its headlights off. (The officers did not recall which street.) Det. Lenihan activated the police car's lights and siren and the Hyundai sped away. Det. Lenihan turned off the lights and siren and Officer Burgos ran the Hyundai's license plate and saw that the car was reported stolen. Det. Lenihan kept his car's lights and siren off and followed the Hyundai over the Macombs Dam Bridge into the Bronx. The officers lost sight of the car and, when they saw it again, it was unoccupied and rolling down a hill on West 161st Street toward Ogden Avenue. The Hyundai collided with a parked car, as shown below in a diagram created by the NYPD Crime Scene Unit (CSU). In the diagram north is to the right:



NYPD Crime Scene Unit (CSU) diagram, showing where the Hyundai crashed into a parked car on Ogden Avenue and West 161st Street, and showing the footbridge leading from the other end of the West 161st Street block to the wooded area.



Crime Scene Unit photograph of the blue Hyundai and the car it collided with.

Sgt. Woloski and Officer Burgos told OSI they looked up West 161st Street toward Summit Avenue and saw two people standing at the top of the hill. Sgt. Woloski and Officer Burgos ran up the hill, and Sgt. Woloski apprehended one of the people. (The arrested person was an adolescent under the law, and the New York City Law Department commenced a proceeding against him in Family Court.)

Officer Burgos told OSI he pursued the other person, later identified as Daniel Rivera, across the footbridge over the Major Deegan Expressway, to a wooded area. Officer Burgos said Mr. Rivera turned around and appeared to fire a gun at him – he saw a muzzle flash and heard a gunshot. Officer Burgos said that as he continued to pursue Mr. Rivera, he saw him turn and fire a second shot, and Officer Burgos fired his weapon once at Mr. Rivera. Officer Burgos said he did not know whether his shot struck Mr. Rivera. He said Mr. Rivera ran into the wooded area and that he (Officer Burgos) stayed by the footbridge and waited for backup.

Sgt. Woloski, Det. Lenihan, and Officer Burgos were not equipped with body-worn cameras (BWCs) at the time of the incident. They told OSI they were in the precinct stationhouse when the call came in about the stolen car, and that their BWCs were in the charging stations when they left the precinct to respond to the call.

OSI's review of cell phone information for Mr. Rivera indicates that Mr. Rivera's phones were physically in the Bronx during the 30th Precinct officers' pursuit of the Hyundai, making it unlikely that Mr. Rivera was in the blue Hyundai in Manhattan at the time of the initial pursuit.

The Shooting

OSI interviewed the police officers who searched for Mr. Rivera in the wooded area, all of whom were assigned to the 44th Precinct, and reviewed their BWC videos, as summarized below. All times noted are based on BWC time stamps or officer recollection, as indicated by the context.

Police Officer Gustavo Ochoa

Officer Ochoa's BWC (which can be seen here) showed that he and other officers from the 44th Precinct arrived near the footbridge at 12:01 a.m. As he got out of his patrol car he heard, "Shots fired," over the radio. Officer Ochoa and other officers ran toward the footbridge. When they crossed the footbridge, Officer Ochoa's BWC showed that Det. Lenihan told them, "He went this way. Tall, black, brown trench coat." Officer Burgos said, "There was a shot that came, I shot back. There was a noise. He looked back and shot something." BWC showed that Det. Lenihan and Officer Burgos stayed back near the footbridge while Officer Ochoa and other officers went to the wooded area to look for Mr. Rivera.

At 12:11 a.m. Officer Ochoa's BWC showed that Mr. Rivera was lying on the ground among the leaves, some distance away, and that Officer Ochoa told him to show him his hands. Officer Ochoa said to other officers, "Watch out, don't approach." Officer Ochoa's BWC showed that he and other officers fired, but his BWC did not show Mr. Rivera at the moment he (Officer Ochoa) fired because his extended arms blocked the BWC's view. BWC showed that Officer Andreu approached Mr. Rivera and took a silver gun from Mr. Rivera's hand and gave it to Officer Ochoa.

Still image from Officer Ochoa's BWC, showing Mr. Rivera lying on the ground in the wooded area

Still image from Officer Ochoa's BWC, showing Officer Andreu picking up the silver gun.

In his interview with OSI, Officer Ochoa said he saw Mr. Rivera lying on the ground face down. As he approached, Mr. Rivera started to get up with his right hand tucked under his body. Officer Ochoa said he saw Mr. Rivera holding a silver firearm, pointed at him from under his chest. He said he feared for his safety and fired his weapon multiple times. He said he heard multiple gunshots coming from Mr. Rivera's direction and believed Mr. Rivera was firing back at him. After the gunshots stopped, Officer Ochoa repositioned himself, and saw that Mr. Rivera still had his finger on the trigger of the firearm and saw that his hand was still moving. Officer Ochoa fired one more shot at Mr. Rivera. Officer Ochoa said he and Officer Andreu approached Mr. Rivera and that Officer Andreu took a silver gun from Mr. Rivera's hand and handed it to him.

Police Officer Jack Lopez

At 12:11 a.m. Officer Lopez's BWC (which can be seen here) showed that he was following Officer Ochoa when they saw Mr. Rivera, who was lying on the ground.

Still image from Officer Lopez's BWC, showing Mr. Rivera lying on the ground at 12:11:40 a.m. Officer Ochoa is to the right.

Still image from Officer Lopez's BWC at 12:11:44 a.m. (four seconds later), showing Mr. Rivera raising his upper body and holding a light-colored object in his right hand.

In his interview with OSI, Officer Lopez said he was positioned to the left of Officer Ochoa when they encountered Mr. Rivera. He saw Mr. Rivera on the ground face down, then saw him get up on his feet, stand fully erect, and point a silver gun at him and other officers. Officer Lopez said he believed Mr. Rivera fired at them – he saw a muzzle flash from the gun. In response, he and other officers fired their weapons at Mr. Rivera multiple times.

Police Officer Travis Andreu

Officer Andreu was not equipped with his BWC during this incident. Officer Andreu told OSI he first saw Mr. Rivera lying down, and then Mr. Rivera got up. Officer Andreu saw a silver gun in Mr. Rivera's hand pointed at the officers. Officer Andreu said he believed Mr. Rivera fired at them – he saw muzzle flashes from the gun. Officer Andreu said he and other officers fired their weapons at Mr. Rivera. He said he saw Mr. Rivera walk or run five to ten feet before he collapsed on the ground. Officer Andreu said he grabbed the silver gun from Mr. Rivera and gave it to Officer Ochoa.

Police Officer Michael Meneses

Officer Meneses had previously fired his weapon on duty, in April 2021, in an incident investigated by the Bronx County District Attorney's Office. No charges were brought.

Officer Meneses was equipped with his BWC during the incident but had turned it off before the encounter with Mr. Rivera; he told OSI he thought the search had been called off. Officer Meneses said he approached Mr. Rivera with other officers and saw him stand up and point a silver gun at Officer Ochoa and believed Mr. Rivera fired it – he saw muzzle flashes from the gun. Officer Meneses said he fired his gun in response. He said he saw Mr. Rivera collapse where he stood. Officer Meneses said that after Mr. Rivera fell his gun was still pointed at him, so he fired his gun one or two more times at Mr. Rivera.

Police Officer Omar Aguilar-Martinez

Officer Aguilar-Martinez did not fire. His BWC showed that he approached Mr. Rivera with other officers and yelled, "Let me see your hands." His BWC then captured the sound of multiple gunshots and showed that Officer Aguilar-Martinez fell to the ground. Officer Aguilar-Martinez told OSI that when he arrived in the wooded area he heard several gunshots and fell to the ground. He said he did not know where the first shot came from or who shot first.

Sergeant Carlos Barahona

Sgt. Barahona was not equipped with BWC. Sgt. Barahona did not fire his gun. Sgt. Barahona told OSI he was looking for Mr. Rivera in the wooded area and heard multiple gunshots from behind. He saw multiple muzzle flashes and heard gunshots. He saw Mr. Rivera on the ground and saw a silver gun near Mr. Rivera's hand. He said he identified himself to the other officers, took the gun from the ground after Officer Ochoa placed it there, secured it, and instructed the other officers on scene to bring Mr. Rivera out of the wooded area so they could render aid.

Post-Shooting

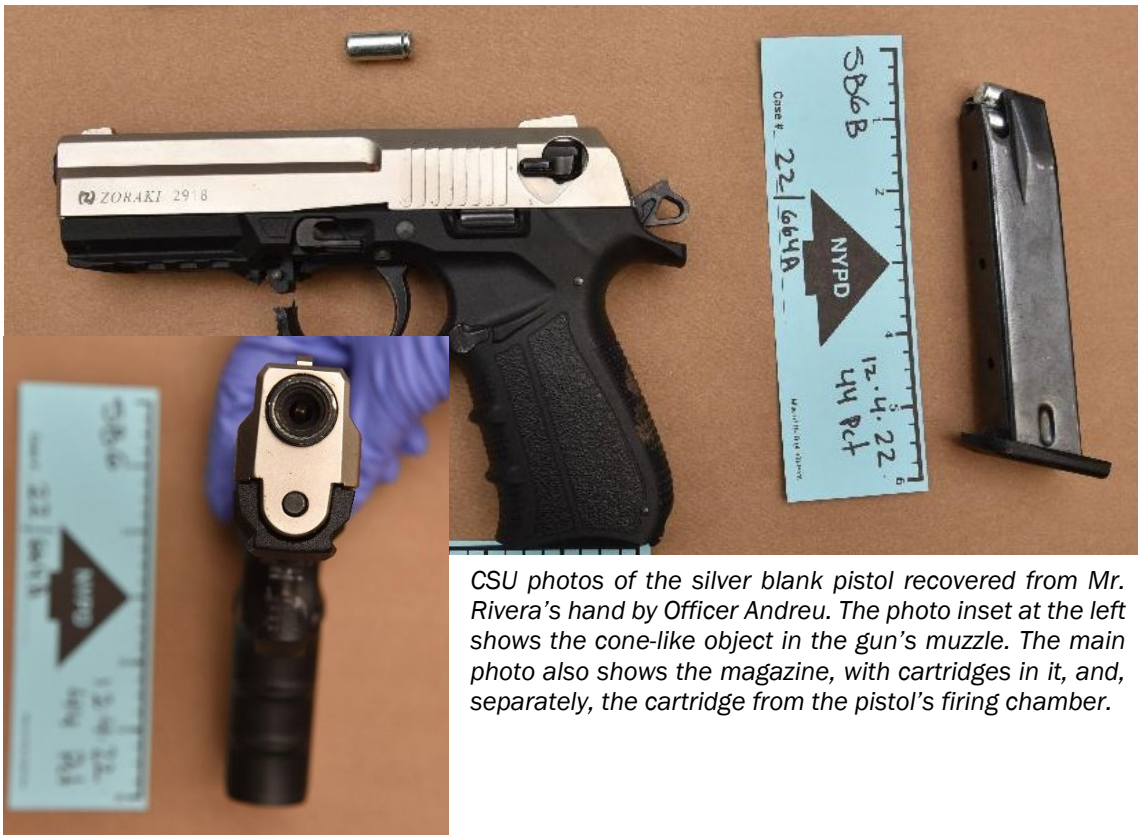
The gunfire stopped at 12:12 a.m. Officer Lopez's BWC showed that Sgt. Barahona told the officers to carry Mr. Rivera out of the wooded area, render aid, and wait for the ambulance. Officers carried Mr. Rivera to the shoulder of the Major Deegan Expressway, placed him on his side, searched him, and, at 12:16 a.m., began to render aid. Officer Danny Arias's BWC showed that officers cut Mr. Rivera's clothing, found where he was shot, and applied gauze to his wounds. An ambulance arrived at 12:19 a.m. and people loaded Mr. Rivera into the ambulance at 12:21 a.m. Officer Arias used his police car to escort the ambulance to Lincoln Hospital.

Collection and Analysis

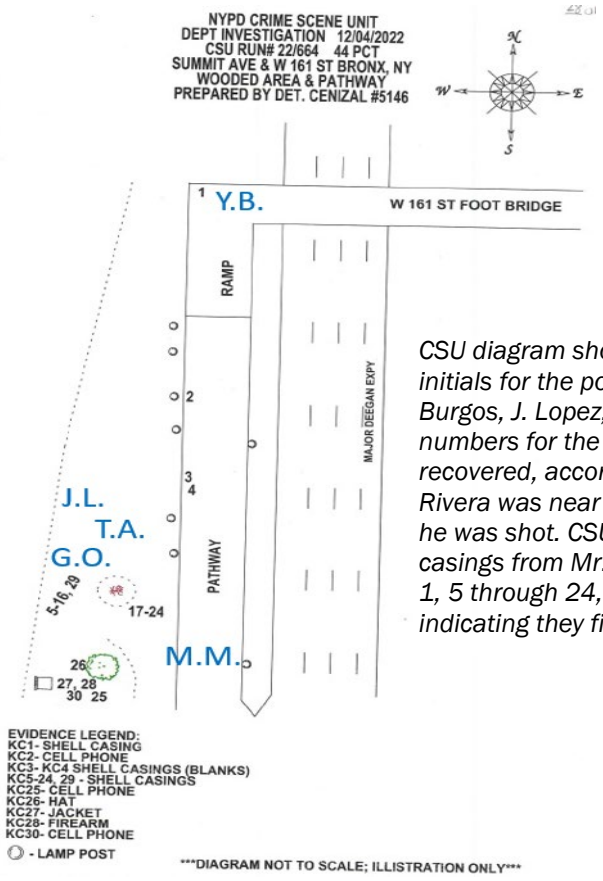
CSU processed the scene. They recovered two guns: one was the silver gun taken from Mr. Rivera's hand by Officer Andreu; the other was a black gun recovered from the ground near where Mr. Rivera was lying when the police first saw him. According to the NYPD Firearms Analysis Section (FAS), the two firearms were "blank pistols." They were operable, but only to fire blanks, not to discharge live ammunition.

OSI interviewed Det. Brian Hughes of FAS, who said that "blank pistols" look like real firearms but can only fire blank cartridges. Blank pistols cannot fire projectiles because the barrels are fitted with a cone-like object, with a small opening at the narrow end, which permits the pistol to produce a muzzle flash and an audible gunshot but not to fire a projectile, because a projectile cannot fit through the opening at the end of the cone. He said a regular cartridge and a blank cartridge are similar in that they both have a shell casing, gun powder, and primer, but a blank cartridge does not have a projectile. When fired, a blank pistol modeled after a semi-automatic firearm ejects spent shell casings from an ejection port, just as a real semi-automatic pistol ejects spent shell casings.

CSU photo showing the black blank pistol, recovered from the ground.



CSU photos of the silver blank pistol recovered from Mr. Rivera's hand by Officer Andreu. The photo inset at the left shows the cone-like object in the gun's muzzle. The main photo also shows the magazine, with cartridges in it, and, separately, the cartridge from the pistol's firing chamber.



CSU diagram showing the area of the shooting, with initials for the position of each discharging officer (Y. Burgos, J. Lopez, T. Andreu, G. Ochoa, M. Meneses), and numbers for the shell casings and other evidence recovered, according to the legend at the bottom. Mr. Rivera was near the green tree on the bottom left when he was shot. CSU designated Numbers 3 and 4 the shell casings from Mr. Rivera's gun. CSU designated Numbers 1, 5 through 24, and 29 the officers' shell casings, indicating they fired 22 shots. Number 2 was a cell phone

Ballistics Evidence

The "Blank" Ballistics

The recovered items from the scene of the shooting CSU designated "3" and "4" were 9 mm P.A.K. shell casings. According to Wikipedia, P.A.K. is an acronym for the German phrase "Pistole Automatik Knall," meaning "automatic blank pistol." OSI interviewed NYPD Criminalist Meghan Davis, who examined the P.A.K. shell casings and said, based on visual inspection, that they were blank shell casings with green markings and rubber components unique to blank shell casings.

The silver blank pistol taken from Mr. Rivera's hand by Officer Andreu had a capacity of 19 rounds in the magazine, and one round in the firing chamber, for a total of 20 rounds. The black blank pistol recovered from the ground near where Mr. Rivera was positioned when police fired at him had a capacity of 17 rounds in the magazine and one round in the firing chamber, for a total of 18 rounds. FAS found that both pistols were operable with blank ammunition.

When examined, the silver gun had one round of blank ammunition in the chamber and seven in the magazine and the black gun had four rounds of blank ammunition in the magazine. Based on the interviews with the officers, OSI's review of the BWC videos, and evidence from the autopsy (see below), it is likely that the pistol Mr. Rivera used in the incident was the silver pistol. Although there is no way to know how Mr. Rivera's pistol was loaded before the firing started, the state of the load of the silver pistol was consistent with Mr. Rivera having fired up to 12 rounds.

Police Ballistics

CSU took possession of Officers Burgos's, Andreu's, Ochoa's, Lopez's, and Meneses's firearms, which were NYPD-issued 9 mm pistols with 15-round magazines, for a total capacity of 16 rounds, if one round is in the firing chamber. It is standard practice for NYPD officers to fully load their guns, with a fully loaded inserted magazine and one round in the firing chamber.

FAS found that Officer Burgos's Glock 17 firearm had one round in the chamber and 14 rounds in the magazine, which was consistent with firing one shot. Officer Meneses's Glock 17 firearm had one round in the chamber and five rounds the magazine, which was consistent with firing 10 shots. Officer Lopez's Glock 17 firearm had one discharged shell casing in the chamber and 12 rounds in the magazine, which was consistent with firing four shots. Officer Ochoa's Sig Sauer P226 firearm had one round in the chamber and nine rounds in the magazine, which was consistent with firing six shots. Officer Andreu's Glock 17 firearm had

one round in the chamber and six rounds in the magazine, which was consistent with firing nine shots. Therefore, 30 rounds were fired by Officers Burgos, Andreu, Ochoa, Lopez, and Meneses, though only 22 shell casings were found at the scene (not counting the two blank shell casings). As one police shell casing would not have been at the scene, as it remained in Officer Lopez's gun, it appears that CSU failed to recover seven shell casings from the officers' guns.

OSI's review of BWC indicates that the ground in the wooded area was covered with leaves, and that when Mr. Rivera was lying in the wooded area he seemed to be trying to hide in the leaves. This ground cover could account for the failure of CSU to find the spent shell casings ejected by the officers' guns. Similarly, it could account for the failure to find blank shell casings near Mr. Rivera's body, despite a number of officers telling OSI in their interviews that they had seen and heard Mr. Rivera fire from that position.

FAS compared the shell casing recovered from the footbridge and the 21 other police shell casings found in the wooded area with test-ejected shell casings from the officers' firearms. FAS found that the shell casing from the footbridge was discharged from Officer Burgos's firearm. Of the 21 other shell casings, FAS found that two were fired by Officer Ochoa, eight by Officer Meneses, eight by Officer Andreu, and three by Officer Lopez.

The medical examiner recovered one deformed bullet from Mr. Rivera's right leg during the autopsy. FAS compared the deformed bullet with test-fired bullets from the officers' firearms and found that the deformed bullet was fired from Officer Ochoa's firearm.

Medical Records and Autopsy

Lincoln Hospital Medical Records

OSI reviewed Mr. Rivera's Lincoln Hospital medical records, which show that Mr. Rivera was admitted to the hospital on December 4, 2022, at 1:25 a.m. According to notes made by Dr. Alexander Mercado, Mr. Rivera arrived alive, making sounds but not making purposeful movements, and gasping for breath. Dr. Mercado saw a gunshot wound to his head and another to his right thigh. Mr. Rivera was treated in the intensive care unit, but was pronounced dead by Dr. Mercado the next day, December 5, 2022, at 4:13 p.m.

Autopsy

OSI reviewed the autopsy report by Dr. Terra Cederroth of the Office of Chief Medical Examiner of the City of New York. Dr. Cederroth concluded that the cause of death was "gunshot wounds of the head and right lower extremity with injuries of brain and major blood vessels." The autopsy report showed that Mr. Rivera had a perforating gunshot wound to the head (meaning

the projectile entered and exited the head) and a penetrating gunshot wound to the right leg (meaning the projectile remained in the leg). OSI interviewed Dr. Cederroth. She said that, in addition to the fatal wounds, Mr. Rivera had a graze wound to his right arm and a laceration on his right index finger, which, taken together with the broken trigger guard of the silver blank pistol, which had blood on it, were consistent with a bullet striking the gun and Mr. Rivera's arm when he was pointing the gun at the officers. Dr. Cederroth also noted stippling on Mr. Rivera's left hand around his thumb. (Stippling is skin burned by ignited gunpowder emitted from a gun when it is fired.) Dr. Cederroth said the stippling was consistent with the left hand being close to the gun when it was fired. Dr. Cederroth said the gunshot wound to the right leg was consistent with Mr. Rivera being shot when he was on the ground, based on the path of the bullet, from back to front and upward. The absence of fouling or stippling to his leg or head was consistent with Mr. Rivera being shot from more than a few feet away.

Photos from the autopsy, showing stippling on the left hand (upper photos), the graze wound on the right forearm (lower left photo), and injuries on the right hand (lower right photo).

CSU photos of the silver blank pistol, showing the broken trigger guard (circled in blue) and what appeared to be blood stains.

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). A criminal 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 Steele*, 26 NY2d 526 (1970). As detailed below, based on the evidence in this investigation, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that the use of deadly physical force by the discharging officers was justified.

In this case, Officers Burgos, Andreu, Ochoa, Lopez, and Meneses used deadly physical force. Under PL 10.00(1) deadly physical force is "physical force which, under the circumstances in

which it is used, is readily capable of causing death or other serious physical injury." Under PL 10.00(10) serious physical injury is "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."

PL 35.30 is the provision defining justification when a police officer or peace officer uses force to effect or attempt to effect an arrest. PL Section 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."

Deadly physical force by a police officer is justified when the officer reasonably believes deadly physical force is necessary to defend the officer or another against the imminent use of deadly physical force. Police officers using force pursuant to PL 35.30(1) are under no duty to retreat when threatened with deadly physical force, under PL 35.15(2)(a)(ii).

"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, and that a "reasonable person" under the same circumstances could have believed the same. *People v Goetz*, 68 NY2d 96 (1986); *People v Wesley*, 76 NY2d 555 (1990). Therefore, before using deadly physical force in self-defense, a person must honestly and in good faith believe deadly physical force was about to be used against them and that deadly physical force was necessary for self-defense, and a reasonable person under the same circumstances could have believed the same.

Based on the evidence in the investigation, Officer Burgos initially pursued Mr. Rivera based on a reasonable, though possibly mistaken, belief that he was involved in stealing a car or possessing a stolen car. After Mr. Rivera appeared to fire a gunshot at Officer Burgos, officers had reasonable cause to believe that Mr. Rivera was committing the crime of criminal possession of a weapon and had committed the crime of menacing a police officer, and possibly, of attempted murder.

Although the firearms later recovered were determined to be blank pistols, at the time the officers encountered Mr. Rivera they saw what appeared to be a firearm, which fired two shots that, by virtue of the muzzle flashes and explosive sounds, appeared to be shots from a real firearm. According to the police officers' statements, Mr. Rivera pointed what appeared to be a silver gun at them. Both recovered blank pistols looked like real firearms. Therefore, OSI concludes that a prosecutor would not be able to disprove that the officers reasonably believed they saw a real firearm or that they reasonably believed they needed to use deadly physical force in self-defense in the face of what they reasonably believed to be Mr. Rivera's use or imminent use of deadly physical force. As a result, OSI will not seek charges and closes the matter with the issuance of this report.

Dated: February 26, 2025