Office of the New York State Attorney General Letitia James

Office of Special Investigation

August 13, 2024

Report on the Investigation into the Death of Edward Holmes

DEATH OF EDWARD HOLMES
ERIE COUNTY, FEBRUARY 24, 2024

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or peace officer. When OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of Mr. Edward Holmes, who was shot and killed by officers of the City of Buffalo Police Department (BPD) on February 24, 2024.

OVERVIEW

On February 24, 2024, at 9:59 a.m. a 911 caller said there was a man with a shotgun at 172 Reed Street in Buffalo who had threatened someone and had said, "if anyone pull up on him, he's gonna shoot at them." BPD officers arrived at Reed Street at 10:02 a.m. and saw a man in the middle of the street, holding a long gun. The first two officers to arrive, Officers Lewis and Ramnarain, got out of their BPD cars and repeatedly told the man, "Drop the gun. Put it down." When Officers Slupinski and Doyle arrived the man fired the gun, and then officers yelled their commands more forcefully. When the man pointed the gun at them Officers Lewis and Slupinski shot at him. The man fell. Officers called out "Shots fired" on the radio and requested an ambulance.

Officers approached the man and kicked away the gun on the ground next to him. Officer Ramnarain picked up the gun and placed it in his car: it was a 12-gauge shotgun loaded with two live shells; there was one shell in the breach of the barrel. As officers checked the man for wounds and provided aid, they again called for EMS. An ambulance and firetrucks arrived and lifesaving efforts continued. The man, identified as Edward Holmes, 58 years old, was pronounced dead at 10:35 a.m., after consultation with Dr. Leroy at the Erie County Medical Center. Later the same day the Erie County Medical Examiner performed the autopsy and determined that Mr. Holmes was shot once in the left arm and once in the left side of his chest, which caused his death.

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 the officers' use of deadly force against Mr. Holmes was justified under New York Law, and therefore will not seek charges in this case.

FACTS

911 call

On February 24, 2024, at 9:59 a.m. a person called the Erie County 911 Center[1] and reported a man with a shotgun at 172 Reed Street. The caller said the man was Black, was wearing camouflage clothing, and had threatened a person at a church. The caller also said that the man said, "if anyone pull up on him, he's gonna shoot at them." The audio of the 911 call can be heard here: ***Call to 9-1-1 Recording.wav***

OSI later determined the phone used to make the 911 call was Edward Holmes's phone, based on phone records from his service provider, interviews with Mr. Holmes's friends and neighbors, and a forensic data analysis of the phone found in Mr. Holmes's pocket.

BPD officers responded to a call to the Erie County 911 Center, which reported a man with a shotgun in the middle of Reed Street. When the officers arrived at Reed Street, the weather was clear and there was bright sunlight.

The responding BPD officers were Andrew Lewis, Jr., Yuvindra Ramnarain, Joshua Slupinski, and Somalia Doyle, who were wearing standard BPD uniforms and driving marked BPD cars with the emergency lights on. They activated their BPD-issued body worn cameras (BWCs).

On February 24, 2024, Officers Ramnarain, Doyle, and Lewis had been with BPD for 18 months, and Officer Slupinski had been with BPD for five years.[2]

BWC Video[3]

Officer Lewis's BWC video showed that as he got out of his BPD car he used the car's door as a shield and told Mr. Holmes, "Put the gun down," multiple times. His BWC also captured Officer Ramnarain saying, "Drop the gun," several times. Officer Lewis's BWC captured audio of Mr. Holmes firing the shotgun. Officer Lewis's BWC showed that he drew and pointed his handgun at Mr. Holmes and yelled "Put the gun down," before he fired two shots at Mr. Holmes. His BWC showed that he walked backward while firing several more times. After the

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[1] The E911 Center at the Erie County Public Safety Campus in Buffalo is staffed by the Erie County Central Police Services Communications Division. Call takers process some 900,000 calls a year and direct responses from EMS, Fire, and Police, as appropriate. https://www3.erie.gov/cps/enhanced-9-1-1

[2] Prior to joining BPD, Officer Lewis was with the New York State Department of Corrections for three years, and Officer Slupinski was with the jail division of the Erie County Sheriff's Office for two years.

[3] BWC video from Officer Lewis can be viewed here: ***Officer Lewis BWC .mp4.*** BWC video from Officer Ramnarain can be viewed here: ***Officer Ramnarain BWC .mp4.*** BWC video from Officer Slupinski can be viewed here: ***Officer Slupinski BWC .mp4.*** BWC video from Officer Doyle can be viewed here: ***Officer Doyle BWC .mp4.***

shooting stopped, Officer Lewis approached Mr. Holmes and told the dispatcher, “Radio, there’s one shot.”

Still from Officer Lewis’s BWC, as he got out of his car, with Mr. Holmes circled.

An enlarged still from Officer Lewis’s BWC, showing Mr. Holmes (circled), pointing the shotgun at the officers.

Officer Ramnarain's BWC video showed that as he got out of his BPD car he used the car's door as a shield and repeatedly told Mr. Holmes, "Drop the gun." His BWC showed that Officer Ramnarain drew and pointed his handgun at Mr. Holmes. His BWC captured Officer Lewis saying, "Put it down" and captured audio of Mr. Holmes firing the shotgun. Officer Ramnarain's BWC captured audio of Officer Slupinski saying, "Drop the gun," as Officer Ramnarain moved to the rear of his car and yelling, "Put the gun down now…Drop the gun." His BWC showed that after the officers stopped shooting, Officer Ramnarain called out on the radio, "Shots fired," and "We got one down radio." Officer Ramnarain did not fire his gun. His BWC showed that he moved toward Mr. Holmes, who was down on the pavement. Officer Ramnarain picked up the shotgun.

Still from Officer Ramnarain's BWC as he got out of his car and drew his gun. Mr. Holmes is circled.

Still from Officer Ramnarain's BWC, showing him picking up the shotgun.

Crime Scene photograph of the shotgun and ammunition. Officer Ramnarain had placed the gun in his BPD car after removing the ammunition.

Officer Slupinski's body worn camera video showed that just before he got out of his BPD car he radioed, "Hold the air, he's still got the gun." His BWC showed that as other officers were yelling at Mr. Holmes, Officer Slupinski yelled, "Drop the gun, drop it now," and then the BWC capture audio of two shots fired by Officer Lewis. Officer Slupinski's BWC then showed that he fired his gun repeatedly at Mr. Holmes. His BWC showed that as the officers stopped shooting, Officer Slupinski moved backward and around to the passenger side of Officer Lewis's car and called for an ambulance, saying, "Radio, start rolling AMR…we have a male down." Officer Slupinski went toward Mr. Holmes, who was down on the pavement and kicked the shotgun away from Mr. Holmes's body. Officer Slupinski began to check on the wounded Mr. Holmes and told the other officers, if "someone's got gloves, start compression on these."

Still from Officer Slupinski's BWC, showing Mr. Holmes circled and Officer Lewis in the foreground.

Officer Doyle's BWC video showed that she pulled her BPD car in behind Officer Ramnarain's car, and as she got out of her car it captured the sound of the shotgun being fired. Officer Doyle drew her handgun and used her car's door as a shield, and her BWC captured other officers yelling, "Put the gun down…drop the gun," and then shooting their guns. Officer Doyle did not fire her gun. Her BWC showed that she advanced, using Officer Ramnarain's car as a shield, and then she moved forward with the other officers toward Mr. Holmes, who was down on the pavement.

Still from Officer Doyle's BWC, as she got out of her car; Mr. Holmes is circled.

Interviews

OSI met with and interviewed Officers Lewis, Ramnarain, Slupinski, and Doyle.

In his interview Officer Lewis said he was working in C District on February 24, 2024, when he heard the call come over the police radio of a man with a gun on Reed Street. Lewis said the radio reported a man dressed in camouflage, walking down the street, who had threatened individuals at a church. Lewis said he looked at the computer screen in his patrol car to verify that the address of the call was 172 Reed Street. Lewis said he responded because he was already close by. He said that as he was pulling up on Reed Street he used his radio to add himself to the call and saw a person in the middle of the road, wearing camouflage and holding a shotgun. Officer Lewis said as he got out of his car he immediately started issuing commands to the man to "put it down." Lewis said that he recalled watching the man shoot his shotgun, seeing smoke going out from the muzzle and hearing the shot. Officer Lewis stated that the suspect pointed the shotgun into a "drawn position" in his direction, and at that moment he was in fear of his life and he started to return fire. Officer Lewis said that while shooting he backed up behind the patrol cars, trying to find cover. Officer Lewis said he followed his training and continued to fire shots until he saw that the threat was stopped. He added that when the suspect was on the ground he and other officers "tactically approached," as the man still had the shotgun. Lewis said as soon as the shotgun was secured officers began rendering aid.

In his interview Officer Ramnarain said that when he heard the radio call on February 24 for a man with a gun on Reed Street he was in his patrol car and not far away; he answered the radio that he was responding. Officer Ramnarain said he pulled up to Reed Street seconds after Officer Lewis. He said that when he pulled up he saw that the man matched the description given over the radio: male, wearing camo, and holding a shotgun. Officer Ramnarain said the man was the only individual in the street and that he started "walking towards the patrol vehicles." Officer Ramnarain said he got out of his car, drew his gun, aimed it at the man, and shouted commands of "drop the weapon." He said he saw and heard the man fire the shotgun, which he said was "pointed in their direction." He said he felt there was a threat to his own life, and he heard the shots of the other officers, but he did not shoot since he had "no clear shot to take." Officer Ramnarain said once the man was on the ground he moved to get a better vantage point, closer to the man. He said the man still had the shotgun, so he continued yelling commands to "roll away from the gun." He said he and other officers approached the suspect, and Officer Slupinski kicked the shotgun away from the man. Officer Ramnarain said he picked up and moved the shotgun. He said while other officers were providing aid to the man he cleared the shotgun of the remaining ammunition and stored it in the back of his patrol vehicle.

In his interview Officer Slupinski said he was working in C District as the primary officer assigned to the area when, around 10 a.m., dispatch called him for a man wearing camo, in the middle of Reed Street, carrying a shotgun. Officer Slupinski recalled he was about two minutes away when the call came to him. He said he was the third police car to arrive, when he was pulling up at Reed Street. He said he saw a man matching the exact description that came over the radio. He said that seconds after getting out of his patrol vehicle he heard the shotgun fire and saw that the man "had the gun pointed" at him. He said he felt this was a threat to his life, so he "returned fire." He said he fired his gun as he was trained: "You shoot, to stop the threat." He said that at that moment he did not know which of the other officers were also shooting. He said the man dropped, and they used a tactical approach when going toward him, because he still had the shotgun in his reach. Officer Slupinski said he radioed for AMR for "a man down with gunshot wounds." He said that when they reached the suspect he kicked the shotgun away and they began to render aid.

In her interview Officer Doyle said that on February 24 she was working for C District when she heard the call come over the radio for a man with a gun on Reed Street. She said she was in the parking lot at the C District station, four to six minutes from Reed Street. She said was the fourth police car to arrive and immediately saw one man in the middle of the street with a shotgun. She said he was wearing "camo" clothing and matched the description she heard over the radio. Officer Doyle said that when she got out of her car other officers were shouting commands to "drop the weapon." She said she drew her weapon and, during those commands, she noticed the man raise the shotgun and fire. Officer Doyle said she did not fire her gun because she did not have a clear shot of the man. She added she would have shot if

she had had a clear shot, because she felt the man was a threat to her safety and the safety of the other officers. She said that at the time she did know the man had shot, and she did not know which of the other officers had shot. Officer Doyle said once the suspect was down she and other officers went in a tactical approach, as the man still had his shotgun. She said once the shotgun was secured she assisted in beginning to provide aid to the man until EMS arrived and took over.

Medical Efforts

After the shooting Buffalo Fire Department (BFD) and AMR[4] arrived.

According to BFD records, "Engine 3 was dispatched to a call for a person shot," and when they arrived at 10:08 a.m. there were "multiple BPD officers giving CPR to patient. Engine 3 then took over CPR and lifesaving efforts along with AMR." BFD records state, "After rigorous efforts and multiple rounds of CPR over a span of an hour, a supervisor from AMR called the hospital, where the decision was made by the doctor to end efforts and pronounced the patient deceased."

According to AMR records, at 10:10 a.m. they began treating Mr. Holmes by providing "continuous pressure" on the gunshot wound of the left chest to control bleeding, and by providing CPR[5] with ventilation, but there was no ROSC,[6] and applied an AED[7] with no defibrillation. EMT Williams spoke with Dr. Leroy at Erie County Medical Center, who was updated with Mr. Holmes's condition, and at 10:35 a.m., further medical efforts were terminated.

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[4] American Medical Response, Inc. is a private ambulance company headquartered in Greenwood Village, Colorado, providing services in 189 locations in the United States. https://www.amr.net/

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

[6] Return of Spontaneous Circulation (ROSC), "is the resumption of sustained perfusing cardiac activity associated with significant respiratory effort after cardiac arrest. Signs of ROSC include moving, coughing, or breathing, along with signs of a palpable pulse or a measurable blood pressure. Both cardiopulmonary resuscitation and defibrillation increase the chances of a patient experiencing ROSC. While the return of circulation is a favorable sign, it does not predict or indicate a favorable long-term outcome, as many patients have died not long after their circulation has returned." https://www.proacls.com/wiki/acls/rosc-return-of-spontaneous-circulation/#

[7] Automated external defibrillators (AEDs) are portable, life-saving devices designed to treat people in cardiac arrest, a medical condition in which the heart stops beating suddenly and unexpectedly. AEDs automatically analyze the heart rhythm in people in cardiac arrest. When appropriate, they deliver an electrical shock to the heart to restore its normal rhythm. https://www.fda.gov/medical-devices/cardiovascular-devices/automated-external-defibrillators-aeds

Medical Examiner

On February 24, 2024, Dr. Sarah Ohanessian, of the Erie County Office of the Medical Examiner, performed an autopsy on the body of Mr. Holmes. Her report said there were:

> "two indeterminate-range gunshot wounds, the chronology of which is unknown. One gunshot wound entered at the left upper arm, injured the lungs, trachea, pulmonary artery and aortic arch, and fractured ribs and the right scapula. Another gunshot wound entered at the left-side chest, injured the liver and stomach, and fractured ribs. Fatal exsanguination resulted."

Dr. Ohanessian concluded that the cause of death was "Gunshot wounds of the torso," deemed the manner of death to be homicide.[8]

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).

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).

PL 35.30(1) 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."

[8] *Report of Examination,* of the Erie County Medical Examiner's Office, dated March 15, 2024, Case # 24-0299.

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).

In this case, Officer Lewis, and Officer Slupinski, each 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, an officer who uses deadly physical force is justified when the officer reasonably believes deadly force is necessary to defend themselves or another 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 them 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, before using deadly force in self-defense, (a) the officer must honestly and in good faith believe deadly force was 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 it was reasonable for Officers Lewis and Slupinski to believe that deadly physical force was necessary to defend themselves or another person from what they reasonably believed to be the use or imminent use of deadly physical force by Mr. Holmes.

Officer Lewis said he saw Mr. Holmes holding the shotgun and that he repeatedly ordered him to "put it down." He said Mr. Holmes fired the shotgun and pointed the shotgun in his direction. He said he was in fear of his life and returned fire. Officer Slupinski said he heard the shotgun and saw that the man "had the gun pointed" at him, and felt this was a threat to his life, so he "returned fire," to "stop the threat." The officers who did not fire their guns also said they believed Mr. Holmes was a threat to their lives. Officer Ramnarain said he shouted, "Drop the weapon," and saw and heard Mr. Holmes fire the shotgun, which was "pointed in their direction." Officer Ramnarain said he did not have a clear shot at Mr. Holmes and felt there was a threat to his own life. Officer Doyle said she drew her weapon, and Mr. Holmes raised the shotgun and fired. She said she did not have a clear shot, but felt Mr. Holmes was a threat to her safety and the safety of the other officers.

The recorded 911 call, the BWC recordings from the four officers, and the recovered shotgun and ammunition support the officers' statements, establishing that Mr. Holmes called 911, and, when the police arrived, fired the shotgun and aimed the shotgun at the police.

In sum, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' actions were justified under New York law. Therefore, OSI will not seek charges and closes the matter with the issuance of this report.

Dated: August 13, 2024